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Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

EARL JAMES WATSON,
Petitioner,

vs.

CHARLES HILL,
Superintendent, Odom Correctional Institute,
Respondent.

Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether or not appellant's trial counsel was ineffective because his counsel advised him that he would be eligible for parole in less than twenty (20) years when he will not be eligible for parole for forty (40) years.

2. Whether or not appellant's plea was knowing and voluntary because of his attorney's incorrect advice.

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Fourth Circuit.

TABLE OF CONTENTS

	Page
Question Presented for Review	i
List of Parties to the Proceedings in the Court Below	ii
Table of Authorities	v
Opinions Below	1
Statement of Jurisdiction	1
Constitutional Provisions, Rules and Regulations Involved	1
Statement of Case	1
Reasons for Granting Writ	7
I. Ineffective Assistance of Counsel	7
II. The Undermining Of The Validity Of Precedent In Deterimining The Outcome Of Future Cases	10
Conclusion	12

Appendix:

A. Opinion of United States Court of Appeals for the Fourth Circuit, Decided April 2, 1997	A-1
B. Judgment of United States District Court, Western District of North Carolina, Decided July 11, 1996	A-2
C. Order denying Petition for rehearing and suggestion for rehearing in banc filed May 13, 1997	A-14
D. Transcript of Plea	A-15
E. W. Thomas Portwood Letter	A-17

F. Transcript of Motion for Appropriate Relief Hearing (portions) A-21

G. Parole Commission Letter A-43

H. The True Bill Newsletter A-44

I. Original Judgment and Commitment, Corrected Judgment and Commitment A-56

J. North Carolina General Statute 15A-1371(a1) A-84

TABLE OF AUTHORITIES

Page

CASES

McMann v. Richardson, 397 U.S. 759, 25 L.Ed.2d 763, 90 S.Ct. 1441 (1970). 7

O'Tuel v. Osborne, 706 F.2d 498 (4th Cir. 1983) 8

Strader v. Garrison, 611 F.2d 61 (4th Cir. 1979). 7

Strickland v. Washington, 466 U.S. 668, 80 L.Ed. 2d 674, 104 S.Ct 2052 (1984). 7

STATUTE

N.C.G.S. 15A-1371(a1) 3

TEXTBOOK

20 Am Jur 2d 147 11

4 Am Jur 2d 599 11

PETITION FOR A WRIT OF CERTIORARI

Earl James Watson, the petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above-entitled case on April 2, 1997.

OPINIONS BELOW

The April 2, 1997, opinion of the Court of Appeals, whose judgment is herein sought to be reviewed, No. 96-7228 is unpublished and is reprinted in a separate Appendix to this Petition, at page A-1

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on April 2, 1997. The jurisdiction of this Court is invoked pursuant to 28 USC § 1254(1).

CONSTITUTIONAL PROVISIONS

This case involves the Sixth Amendment to the Constitution of the United States, which provides as follows:

> In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

Petitioner was indicted in Catawba County, North Carolina, by the Grand Jury, on various charges of first degree rape, first

degree kidnapping, and first degree sex offense. On February 21, 1991, during the jury trial the Petitioner's court-appointed attorney, Thomas W. Portwood, Jr., advised Petitioner to enter into a plea arrangement pursuant to the plea form (Appendix D, at page A-15). Prior to the entry of the plea, Petitioner's attorney advised Defendant that if he took the plea he would serve

> "... less than twenty (20) years but more than ten (10) years, based upon several factors:
>
> A. The fact that we are dealing with Class (B) felonies;
>
> B. Good behavior and cooperation with the system while in prison;
>
> C. North Carolina's progressive attitude toward rehabilitation, parole and probation; and
>
> D. My own personal observation of the Department of Correction."
>
> (Appendix E, at page A-17)

During the Petitioner's Motion for Appropriate Relief hearing, petitioner's attorney testified that prior to the entry of the plea he had incorrectly advised Petitioner that he would "do less than twenty (20) years for the consecutive Class "B" life sentences that he would receive" (Appendix F, at page A-31). Petitioner's attorney also testified that his estimate of time that Petitioner would serve, as outlined in his letter, (Appendix E, at page A-17), were reviewed with Petitioner prior to the entry of the plea (Appendix F, at page A-32).

Petitioner's attorney's assessment of time to be served by Petitioner was made prior to Petitioner entering the plea. In his attorney's letter, his assessment of time to be served as a result of the plea is prefaced by "as I told you in front of your mom and

dad, I estimated it (time to be served) to be less than twenty (20) but more than ten (10), based on several factors....". In reality, pursuant to N.C.G.S. 15A-1371(a1), (Appendix J, at page A-84) petitioner is serving two (2) consecutive terms of life imprisonment, with no minimum term, and is eligible for parole only after serving twenty (20) years on each life sentence pursuant to N.C.G.S. 15A-1371(a1), and letter from the Parole Commission dated December 3, 1991 (Appendix G, at page A-43). Petitioner's attorney admits that his understanding of the law and advice to Petitioner regarding parole eligibility was erroneous. He admits that his interpretation of the law regarding parole eligibility was based on an article in a publication called "The True Bill" (Appendix H, at page A-44 and Appendix F, at pages A-30, 31, 33). He further admits that his "reading of the article must have been incorrect" (Appendix F, at page A-33). On direct examination by the Court, Petitioner's attorney was asked, "did you tell him that he would be eligible for parole any sooner than the two (2) twenty years"? Petitioner's attorney responded, "Your Honor, I did not give him any specific parole eligibility date. My understanding was that these both were Class "B" felonies, and it would be *less than twenty* years, but certainly more than ten years and he would be eligible for parole but I did not give him any date, no sir" (Appendix F, at page A-34, emphasis added). Petitioner's attorney also testified that he never explained to Petitioner that he would be eligible for parole on each sentence *only* after a full twenty (20) years had been served on each sentence (Appendix F, at page A-34).

Petitioner's mother testified that she was in the presence of her son and his attorney prior to the entry of the plea and that "Portwood (petitioner's attorney) told us that he would be serving less than ten....less than twenty but more than ten, and it (sic) would be out in about ten (10) to fifteen (15) years. He did not tell us that he was getting no consecutive life sentences. That

was not mentioned back there in the holding cell" (Appendix F, at page A-36).

Ms. Watson testified that her son pled guilty because of his attorney's explanation as to the actual time her son would serve. (Appendix F, at pages A-35, 36, 37).

Steve Ehlers, Licensed Private Investigator, was called as a witness by the State during the hearing on Petitioner's Motion for Appropriate Relief (Appendix F, at page A-38). He testified that he was present with the Petitioner and his attorney during the pre-plea conversations regarding the possible entry of the plea. (Appendix F, at page A-39).. He recalls that Petitioner's attorney advised Petitioner that he had "tendered the plea of two (2) life sentences but as far as any specific charge or charges that he would be pleading, I don't recall that" (Appendix F, at page A-39). Ehlers further testified that Petitioner's attorney made an indication as to the amount of time Petitioner would receive as a result of his plea (Appendix F, at page A-39), and that "he (Petitioner's attorney) spoke about two (2) Class "B" felonies, and that he could expect or he was looking at twenty (20) years per felony" (Appendix F, at page A-39). Ehlers went on to testify that from the pre-plea meeting with Petitioner's attorney and Petitioner that it was his impression that it "was represented to Jimmy (petitioner) that if he took the plea that his parents would see him out within their natural life" (Appendix F, at page A-41). Ehlers, a Licensed Private Investigator, who was present and heard the discussions between Petitioner's attorney and Petitioner prior to the entry of the plea, understood petitioner's attorney to represent to Petitioner that Petitioner would have a sentence of twenty (20) years on each charge (Appendix F, at page A-41).

The Rulings Below

Petitioner was indicted in Catawba County, North Carolina, by Grand Jury, on various charges of first degree rape, first

degree kidnapping, first degree sex offense.

On February 21, 1991, during the jury trial of these matters, Petitioner, with his court-appointed attorney, entered into a guilty plea, pursuant to the terms of Transcript of Plea (Appendix D, at page A-15). Pursuant to the Transcript of Plea, Petitioner entered a plea to three (3) counts of first degree sex offense, two (2) counts of first degree kidnapping, and one (1) count of first degree rape. Page two (2) of the Transcript of Plea provides that the "State will recommend two (2) consecutive life sentences".

Upon the entry of the plea, the Defendant received an aggregate of two (2) consecutive Class "B" life sentences (Appendix I, at page A-56).

On November 18, 1991, Petitioner filed a Motion for Appropriate Relief, alleging that he was so grossly misinformed by his trial attorney as to the time he would actually serve on the entry of his plea so as to render his guilty plea involuntary, and that Petitioner was denied his Sixth Amendment right to effective assistance of counsel.

Petitioner's Motion for Appropriate Relief was heard on December 2, 1991, before the Honorable Charles C. Lamm, Jr., Superior Court Judge presiding. On December 17, 1991, Judge Lamm entered a Judgment denying Petitioner's Motion for Appropriate Relief.

On March 23, 1992, Petitioner filed a Writ of Certiorari with the North Carolina Court of Appeals, which was denied on April 22, 1992.

Petitioner filed a Writ of Habeas Corpus with the United States District Court for the Western District of North Carolina on August 7, 1992. The Respondent filed a Motion for Summary Judgment, alleging that the Petitioner had filed a "mixed" Petition. On July 1, 1993, United States District Court for the

Western District of North Carolina entered an Order granting Respondent's Motion for Summary Judgment "without prejudice" and with leave for Petitioner to refile once the state remedies are exhausted."

On February 23, 1994, the petitioner filed a Federal Writ of Habeas Corpus stating that petitioner elected to waive certain allegations contained in his original Petition, thereby exhausting all state remedies and enabling the Court to proceed with a determination of the issues presented in Petitioner's Habeas Corpus Brief. On July 3, 1996, the United Sates District Court for the Western District of North Carolina entered an order granting respondents' Motion for Summary Judgment and denying petitioner's Motion for a Writ of Habeas Corpus.

Petitioner filed a Notice of Appeal to the United States Court of Appeals for the Fourth Circuit on August 1, 1996. On April 2, 1997, the United States Court of Appeals for the Fourth Circuit dismissed petitioner's appeal. On April 16, 1997, petitioner filed a Petition for Rehearing with Suggestion for Rehearing In Banc. which was denied on May 13, 1997. Petitioner now files this Petition for a Writ of Certiorari to the United States Supreme Court.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted to resolve the question of federal constitutional law that has been presented. Specifically, Petitioner has been denied his Sixth Amendment right to effective assistance of counsel by his attorney's erroneous advice regarding the actual time Petitioner would serve as a result of his plea thereby rendering his plea involuntary and unintelligent.

I. INEFFECTIVE ASSISTANCE OF COUNSEL

The constitutional right to assistance of counsel implies effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 80 L.Ed. 2d 674, 104 S.Ct 2052 (1984), *McMann v. Richardson*, 397 U.S. 759, 25 L.Ed.2d 763, 90 S.Ct. 1441 (1970). In order to prevail on such a claim, petitioner must show that counsel's representation "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." (*Strickland*, 466 U.S. at page 686). A two-pronged analysis is applied to adjudge a claim of ineffective assistance of counsel: the Petitioner must show that counsel's performance "fell below an objective standard of reasonableness," (*Strickland*, 466 U.S. at page 688), and that there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (*Strickland*, 466 U.S. at page 688.

The Court of Appeals failed to apply this analysis. Petitioner urges this Court to review the standard for effectiveness of counsel, which should be applied in this case.

The performance of the attorney for Petitioner fell below an objective standard of reasonableness. There is a reasonable probability that, but for Petitioner's counsel's unprofessional errors, the result of the proceeding would have been different.

In the benchmark case of *Strader v. Garrison*, Judge Haynsworth stated:

> "Though parole eligibility dates are collateral consequences of the entry of a guilty plea of which a Defendant need not be informed if he does not inquire, when he is grossly misinformed about it by his lawyer, and relies upon that misinformation, he is deprived of his constitutional right to counsel".

Strader v. Garrison, 611 F.2d 61, 65 (4th Cir. 1979).

The *Strader* case was relied upon by the Court in the case of *O'Tuel v. Osborne*, 706 F.2d 498 (4th Cir. 1983) to rule that a Defendant who was told by his attorney that if he pled guilty to second degree murder he would be eligible for parole after serving ten (10) years, whereas he would actually be required to serve twenty (20) years, was so grossly misinformed as to render his guilty plea involuntary.

The facts in *O'Tuel* are similar to the case at bar. In *O'Tuel*, defense counsel failed to discover that the applicable statute regarding a sentence of life imprisonment had been amended. Parole eligibility began only after serving twenty (20) years and not ten (10) years as defense counsel advised Mr. O'Tuel. (*O'Tuel*, 706 F.2d at page 499) This difference was a concern to Mr. O'Tuel due to his age and poor health. If Mr. O'Tuel had known he would be eligible for parole in twenty (20) years, not ten (10) years, he would not have accepted the plea bargain. (*O'Tuel*, 706 F.2d at page 501). The Court in *O'Tuel* further expanded on the fact that it did not matter whether the death penalty was Mr. O'Tuel's primary concern for entering into the guilty plea. The Court found that such other concerns did not "lessen the effect of Mr. O'Tuel's concern about his parole eligibility date." (*O'Tuel*, 706 F.2d at page 501). Further, the court in *O'Tuel* found the plea transcript to be inconclusive, regarding Mr. O'Tuel's concerns in pleading guilty.

While procedural differences existed between *Strader* and *O'Tuel*, the Court found that the facts affecting the voluntariness

of the two (2) pleas were so similar that the disposition of *O'Tuel* was controlled by the decision in *Strader*. The Court in *O'Tuel* found that two (2) considerations bore heavily on the Defendant's decision to plead guilty; the possibility of receiving the death sentence if he were tried and found guilty of first degree murder, and his parole eligibility date if he pled guilty to second degree murder (*O'Tuel*, 706 F.2d at page 501).

Based on the misadvice of Defendant's attorney regarding his parole eligibility date, the Court in *O'Tuel*, relying on *Strader*, found that the Defendant relied on the gross misinformation of his attorney in reaching his decision to plead guilty, and that Defendant had been deprived of his Sixth Amendment right to counsel. The Defendant's conviction was remanded (*O'Tuel*, 706 F.2d at page 501).

In Petitioner's case, defense counsel overlooked a statute that clearly states "a prisoner serving life imprisonment with no minimum term is eligible for parole after serving 20 years." (Appendix J, at page A-84). In advising Petitioner to enter a guilty plea, defense counsel stated his understanding of the law was that Petitioner would do less than twenty years, but more than ten years on two consecutive life sentences. (Appendix F, at pages A-26, 27; Appendix E, at page A-17). Unlike *O'Tuel*, the death penalty was not an issue in entering a plea bargain. Therefore, the only issue left was "years", specifically, how many years would Petitioner have to serve and when would he be eligible for parole. Petitioner was a young man, his only concern in entering a plea would be the number of years he would have to serve and when he would be eligible for parole. At the hearing on his Motion for Appropriate Relief, Petitioner testified that "everything as far as I was concerned was going my way... in my favor and the evidence looked good for me." (Appendix F, at pages A-26, 27, 28) Petitioner testified that he met with his attorney who asked him if he would enter a plea and he told his attorney that he did not want to plea. (Appendix F, at page A-22)

Petitioner finally entered a plea arrangement based on his attorney's advice that he would serve ten (10) to fifteen (15) years maximum with eligibility for parole even sooner. (Appendix F, at pages A-24, 25) Petitioner even questioned his attorney when the judge was reading the plea about two natural lifes and was told not to worry, everything was like his attorney said it would be, which Petitioner took to mean ten (10) to fifteen (15) years. (Appendix F, at pages A-26, 27, 28) Although this may seem self-serving, as in *O'Tuel*, there is no evidence to the contrary (*O'Tuel*, 706 F.2d at page 501).

If Petitioner had known his eligibility for parole would not occur for 40 years, there would have been no difference in entering a plea versus the chance of being put in prison forever by the State. Finally, the court in *O'Tuel* did not rely on the plea transcript in reaching its decision to reverse and remand. The same should be applied in Petitioner's case.

The performance of the attorney for petitioner fell below an objective standard of reasonableness in that Petitioner was grossly misinformed by his attorney regarding the number of years he would be required to serve before he was eligible for parole. Further, there is a reasonable probability that but for Petitioner's attorney's unprofessional errors the result of the proceeding would have been different. Therefore, petitioner's guilty plea was rendered involuntarily.

II. THE UNDERMINING OF THE VALIDITY OF PRECEDENT IN DETERMINING THE OUTCOME OF FUTURE CASES

The United States Court of Appeals for the Fourth Circuit failed to be bound by precedent. Each court looks to its previous decisions in order to remain consistent in its rulings. The failure of the United States Court of Appeals for the Fourth Circuit to follow precedent causes harm to individuals, such as Petitioner

herein, who are relying on precedent to be binding. In 20 Am Jur 2d 147, it states:

> "Under the doctrine of stare decisis, when a court has laid down a principle of law as applying to a certain set of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same. The rule of stare decisis is judicial policy, based on the principle that absent powerful countervailing considerations, like cases should be decided alike, in order to maintain stability and continuity in the law and to insure that the judicial branch will not itself be above the law."

Further in 4 Am Jur 2d 599 and 601, it states:

> "Stare decisis promotes the evenhanded, predictable, and consistent development of legal principles; fosters reliance on judicial decisions; and contributes to the actual and perceived integrity of the judicial process."

(*Samsel v. Wheeler Transp. Servs.*, 246 Kan 336, 789 P2d 541 (criticized on other grounds by *Bair v. Peck*, 248 Kan 824, 811 P2d 1176) and (ovrld on other grounds as stated in *McKissick v. Frye*, 255 Kan 586, 876 P2d 1371); *State ex rel. Moore v. Molpus* (Miss) 578 So 2d 624; (*Payne v. Tennessee*, 501 US 808, 115 L Ed 2d 720, 111 S Ct 2597, 91 CDOS 5052, 91 Daily Journal DAR 7697, reh den 501 US 1277, 115 L Ed 2d 1110, 112 S Ct 28, remanded sub nom *Owens v. State* (Tenn Crim) 1994 Tenn Crim App LEXIS 175, app gr (Tenn) 1994 Tenn LEXIS 243.)

"A federal Court of Appeals is bound by prior decision of its own circuit."

United States v. Cooper (CA5 Fla) 462 F2d 1343, cert den 409 US 1009, 34 L Ed 2d 303, 93 S Ct 452.)

Unless the court is preparing to overturn a case that has been precedent since 1983, then the ruling in *O'Tuel* should be applied to Petitioner's case.

CONCLUSION

WHEREFORE, Petitioner respectfully prays that a Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-7228

UNPUBLISHED

EARL JAMES WATSON,
Petitioner - Appellant,

versus

CHARLES HILL, Superintendent,
Odom Correctional Institute,
Respondent - Appellee.

Appeal from the United States District Court for the Western District of North Carolina, at Statesville. Richard L. Voorhees, Chief District Judge. (CA-94-14-5-V)

Submitted: March 27, 1996 Decided: April 2, 1997

Before RUSSELL, LUTTIG, and MICHAEL, Circuit Judges.

Dismissed by unpublished per curiam opinion.

John William Crone, III, GAITHER, GORHAM & CRONE, Hickory, North Carolina, for Appellant. Clarence Joe DelForge, III, OFFICE OF THE ATTORNEY GENERAL OF NORTH CAROLINA, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

CASE NUMBER: 5:94-CV14-V

EARL JAMES WATSON,
Petitioner,

v.

CHARLES HILL, ET AL.,
Respondents.

JUDGMENT IN A CIVIL CASE

[Filed: July 11, 1996]

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☐ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Judgment is hereby entered pursuant to the final Order of the Court filed July 11, 1996

July 11, 1996
Date

FRANK G. JOHNS
Clerk

'/s/ Carolyn B. Bouchard
(By) Deputy Clerk

United States District Court
for the
Western District of North Carolina

July 12, 1996

* * MAILING CERTIFICATE OF CLERK * *

Re: 5:94-cv-00014

True and correct copies of the attached were mailed by the clerk to the following:

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cc : Judge	( )
Magistrate Judge	( )
U.S. Marshal	( )
Probation	( )
U.S. Attorney	( )
Atty. for Deft.	( )
Defendant	( )
Warden	( )
Bureau of Prisons	( )
Court Reporter	( )
Courtroom Deputy	( )
Orig-Security	( )
Bankruptcy Clerk's Ofc.	( )
Other _____	( )

Date: 7-12-96

Frank G. Johns, Clerk

By: /s/Carolyn B. Bouchard
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

5:94CV14-V

EARL JAMES WATSON,
Petitioner,

v.

CHARLES HILL, et al.,
Respondents.

ORDER

[Filed: July 11, 1996]

THIS MATTER comes before the court upon the respondents' Motion for Summary Judgment, filed September 29, 1994.

The petitioner is a prisoner of the State of North Carolina. The petitioner was represented by W. Thomas Portwood, Jr., of the Catawba County Bar. During trial, the petitioner elected to change his plea to guilty. On February 21, 1991, he pled guilty in cases 90-CRS-10796, 10799, 10800. The first case consisted of one count of kidnapping and two counts of sexual offense; the second case consisted of one count of kidnapping and one count of sexual offense; and, the third case consisted of a single count of rape.

As a result of his plea, the petitioner was sentenced to imprisonment in Case 90-CRS-10796 for a consolidated term of life imprisonment on the sexual offense count and a concurrent term of 40 years on the kidnapping count. In Case 90-CRS-10799, his sentence was 40 years for kidnapping and life imprisonment on the sexual offense count. These four sentences run

concurrently with one another; and the 40 year sentences are reductions from life sentences previously indicated on the Clerk's commitment forms. In Case 90-CRS-10800, the petitioner received a sentence of life imprisonment to be served consecutively to the above sentence.

On November 18, 1991, the petitioner filed a Motion for Appropriate Relief in the Superior Court of Catawba County through his attorney, John W. Crone, III. A hearing was held before the Honorable Charles C. Lamm, Jr., who denied relief in an order filed December 17, 1991. The North Carolina Court of Appeals denied certiorari on April 22, 1992. On August 7, 1992, the petitioner filed his first federal habeas corpus action which was dismissed on grounds of non-exhaustion. On February 23, 1994, the petitioner filed the instant motion for federal habeas relief, stating that he has elected to refile based on exhausted claims by including in his petition only those claims raised And argued in State Court in his Motion for Appropriate Relief."

CONTENTIONS

The petitioner contends that his trial counsel was ineffective because his counsel advised him that he would be eligible for parole in less than twenty years when he will not be eligible for parole for 40 years. He also contends that his plea was not knowing and voluntary because of his attorney's incorrect advice.

ANALYSIS

Knowing and Voluntary Plea

The petitioner alleges that his plea was not voluntary because his attorney told him he would be eligible less than twenty years when in fact, he must serve at least twenty years on each life sentence before he is eligible for parole, a total of 40 years. The petitioner claims that he would not have pled guilty had he been informed correctly.

There is some discrepancy between what the petitioner says his attorney told him regarding his parole eligibility date and what his trial attorney says he told the petitioner. The petitioner claims that his attorney told him that the total time he would have to serve on the two life sentences was ten to fifteen years. Transcript of Motion for Appropriate Relief, p. 12. The petitioner's trial attorney remembers the discussions differently. He claims that he told the petitioner that he estimated that the petitioner would do less than twenty on each life sentence if he received good time credit. Transcript of Motion for Appropriate Relief, p. 37. He also remembers telling the petitioner that he had no way of knowing what the actual time served would be and could not promise him anything. *Id.*

The petitioner's parents also testified at the Motion for Appropriate Relief, as well as Mr. Steve Ehlers, a private investigator helping in the petitioner's case. Judge Charles C. Lamm, Jr. presided over the Motion for Appropriate Relief and entered an order on December 17, 1991. In his order, having observed the witnesses and determined what credibility to give their respective testimony, Judge Lamm made his findings of fact. He found that the petitioner's trial attorney "did not promise or assure defendant of anything . . . he did not promise the defendant he would not serve more than 20 years on each count but instead explained that he could possibly serve the entire life sentences." Judgment on Motion for Appropriate Relief, p.2. Furthermore, Judge Lamm found that the trial counsel advised the petitioner that it was his understanding that the petitioner could receive good time credit on his sentences, and therefore, could do less than 20 years on each life sentence, but he could not promise or assure anything. *Id.* Judge Lamm further found that although the petitioner's counsel incorrectly advised the petitioner that he could receive good time on his sentences which might result in the petitioner serving less than 20 years on each life sentence, he also found that the petitioner's counsel did not promise the petitioner any specific parole eligibility date. *Id.* at 3.

Under 28 U.S.C. §2254(d), where a state court hearing was held and there is some reliable record of the proceeding, factual determinations on the merits shall be presumed correct. 28 U.S.C. §2254(d). 28 U.S.C. §2254(d) lists several criteria which if the petitioner can satisfy, he can overcome the presumption. 28 U.S.C. §2254(d)(1-8). However, the petitioner has not offered due proof of any of these criteria, and the record of the hearing on the Motion for Appropriate Relief supports Judge Lamm's findings. Therefore, this court will apply the facts as found by Judge Lamm in his Judgment on Motion for Appropriate Relief.

A guilty plea must be an informed and intelligent decision of the defendant. *Boykin v. Alabama*, 395 U.S. 238, 242 (1969). An accused must be advised of the direct consequences of his plea, i.e., those results having definite, immediate, and largely automatic effect on the range of the defendant's punishment. *Cuthrell v. Director Patuxent Inst.* 475 F.2d 1364 (4th Cir.), *cert. denied*, 414 U.S. 1005 (1973). Potential parole eligibility, absent special limitations, is not a direct incident to a guilty plea. *Bell v. North Carolina*, 576 F.2d 564 (4th Cir.), *cert. denied*, 439 U.S. 956 (1978); *see Little v. Allsbrook*, 731 F.2d 238 (4th Cir. 1984). However, parole eligibility date about which a defendant was grossly misinformed may require striking the plea. *Strader v. Garrison*, 611 F.2d 61 (4th Cir. 1979).

This courts finds that the petitioner was not "grossly misinformed" as to his parole eligibility date. Although Judge Lamm found that the petitioner had been incorrectly informed that he could reduce his twenty years on each sentence with good time, this mistake does not amount to being grossly misinformed in light of the other information the petitioner's counsel told him. The petitioner's counsel also told the petitioner that he had no way of knowing how much time the petitioner would have to serve, and that the petitioner may have to serve the entire life sentences. Based on Judge Lamm's findings of fact, the peti-

tioner was not "grossly misinformed" as to the time he would have to serve.

Furthermore, at his plea hearing, the petitioner solemnly assured the court, under oath, that he understood his rights to silence and to trial by jury; that he was fully satisfied with the services of attorney, Mr. Portwood; that he fully understood the charges against him and the consequences of his plea; that he knew the maximum penalties he faced (four life sentences plus eighty years); that he freely and voluntarily was choosing to plead guilty; and that he was, in fact, guilty of the subject crimes. He further assured the court that other than his plea agreement, "[no one else] had made any promises or threatened him to enter the plea . . . against his wishes." Plea Transcript, pp. 3-5. The petitioner's declarations are not merely perfunctory statements and absent compelling evidence to the contrary, the petitioner is bound by his in court statements. *Blackledge v. Allison*, 431 U.S. 63, 74-75 (1977).

The petitioner assured the court that he understood the charges against him, and other than his plea, no one had promised him anything to induce him to plea. Furthermore, he was not grossly misinformed at to his parole eligibility date. Therefore, this court finds that his plea was knowingly, voluntarily, and intelligently made.

Ineffective Assistance of Counsel

The petitioner alleges that he received ineffective assistance of counsel when his counsel incorrectly informed him when he would be eligible for parole.

In *Strickland v. Washington*, 466 U.S. 668 (1984), the Supreme Court adopted a two-prong test for determining whether assistance of counsel has been constitutionally adequate. These two prongs are sometimes referred to as the "performance" and "prejudice" prongs. *Fields* 956 F.2d at 1297. The first prong

relates to professional competence. In order to satisfy this prong, the petitioner must show that counsel's representation was deficient to the extent that it fell below an objective standard of reasonableness. *Id.* at 687-91. The Supreme Court made it clear that there is a strong presumption that counsel's conduct was within the wide range of reasonable professional assistance. *Id.* at 689; *see also Fields v. Attorney General of Maryland*, 956 F.2d 1290, 1297-99 (4th Cir.), *cert. denied*, 113 S.Ct. 243 (1992); *Roach v. Martin*, 757 F.2d 1463, 1476 (4th Cir. 1985), *cert. denied*, 474 U.S. 865 (1985); *Hutchins v. Garrison*, 724 F.2d 1425, 1430-31 (4th Cir. 1983), *cert. denied*, 464 U.S. 1065 (1984); *Marzullo v. Maryland*, 561 F.2d 540 (4th Cir. 1977), *cert. denied*, 435 U.S. 1011 (1978).

To satisfy the second prong of the *Strickland* test, the petitioner "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' *Strickland* 466 U.S. at 694. In order to prevail on an ineffective assistance of counsel claim, the petitioner "bears the burden of proving *Strickland* prejudice." *Fields*, 956 F.2d at 1297, *citing Hutchins*, 724 F.2d at 1430-31. If the petitioner fails to meet this burden, a "reviewing court need not consider the performance prong." *Fields*, 956 F.2d at 1290, *citing Strickland*, 466 U.S. at 697.

To warrant setting aside a guilty plea, a defendant must show that counsel's overall performance fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's unprofessional errors, he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 57 (1985).

The petitioner cannot satisfy either prong of the *Strickland* test. First, the petitioner's counsel's performance was not inad-

equate. This court has already found that the petitioner's trial counsel did not grossly misinform him as to his parole eligibility date. Furthermore, the trial counsel negotiated a plea in which in the government would recommend two life sentences instead of the four life sentences plus eighty years sentence that the petitioner was facing if found guilty. In addition, the plea agreement included a provision in which all other pending cases against the petitioner were dismissed. At that time, several other cases involving rape charges and other sexual offenses were pending against the petitioner. As evidenced by the plea agreement, the trial counsel's performance did not fall below an objectively reasonable standard.

In addition, the petitioner cannot show any prejudice. The plea agreement provided that the government would recommend two consecutive life sentences. That is exactly the sentence the petitioner received. The petitioner argues that his attorney told him he would only have to serve ten to fifteen years total on this sentence, but this court has already found that the petitioner's attorney did not tell him that. Instead, the petitioner was given an estimate of when he might be eligible for parole and informed that he might have to serve his entire sentence.

CONCLUSION

The petitioner was not grossly misinformed as to his parole eligibility date, and therefore his plea was knowing and voluntary and his counsel was not ineffective.

THEREFORE, IT IS HEREBY ORDERED that the respondents' Motion for Summary Judgment is GRANTED, and the petitioner's Motion for a Writ of Habeas Corpus is DENIED.

This the 3rd day of July, 1996

/s/ Richard L. Voorhees
Richard L. Voorhees, Chief Judge
United States District Court

United States District Court
for the
Western District of North Carolina

July 12, 1996

* * MAILING CERTIFICATE OF CLERK * *

Re: 5:94-cv-00014

True and correct copies of the attached were mailed by the clerk to the following:

John W. Crone III, Esq.
Gaither, Gorham & Crone
P.O. Box 2507
Hickory, NC 28603-2507

Clarence J. DelForge III, Esq.
Attorney General's Office
P.O. Box 629
Raleigh, NC 27602-0629

cc : Judge	( )
Magistrate Judge	( )
U.S. Marshal	( )
Probation	( )
U.S. Attorney	( )
Atty. for Deft.	( )
Defendant	( )
Warden	( )
Bureau of Prisons	( )
Court Reporter	( )
Courtroom Deputy	( )
Orig-Security	( )
Bankruptcy Clerk's Ofc.	( )
Other _____	( )

Date: 7-12-96

Frank G. Johns, Clerk

By: /s/Carolyn B. Bouchard
Deputy Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-7228
CA-94-14-5-V

EARL JAMES WATSON
Petitioner - Appellant

v.

CHARLES HILL,
Superintendent, Odom Correctional Institute
Respondent - Appellee

FILED
May 13, 1997

On Petition for Rehearing
with Suggestion for Rehearing In Banc

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

/s/ Patricia S. Connor
CLERK

EXHIBIT "A"

STATE OF NORTH CAROLINA

File No. 90CRS [illegible]

Catawba County

In The General Court Of Justice
☐ District ☒ Superior Court Divisi

STATE VERSUS

Name Of Defendant

Earl James Watson ✓

TRANSCRIPT OF PLEA

See Transcript of Court Reporter G.S. 15A-1

The defendant, having offered a plea of guilty and being first duly sworn, makes the following answers to the questions set out below:

	Answ
1. Are you able to hear and understand me?	ye
2. Do you understand that you have the right to remain silent and that any statement you make may be used against you?	ye
3. Are you now under the influence of alcohol, drugs, narcotics, medicines, pills, or any other intoxicants?	no
(a) When was the last time you used or consumed any such substance? ✓	Now ye
4. Have you discussed your case fully with your lawyer and are you satisfied with his legal services?	Ye
5. (a) Do you understand that you are pleading (guilty) (no contest) to the felonies of 3 cts 1° Sex offense, First degree; 2 cts 1° Kidnapping, First Degree; 1 ct 1° Rape, First Degree?	ye
5. (b) Do you understand that you are pleading (guilty) (no contest) to the misdemeanors of _____?	
6. Have the charges been explained to you by your lawyer, and do you understand the nature of the charges, and do you understand every element of each charge?	ye
7. Do you understand that upon your plea you could be imprisoned for a possible maximum sentence of _____ years _____ months (and that the mandatory minimum sentence is _____ years _____ months)? 4 life sentences + 80 yrs	ye
8. Do you understand that you have the right to plead not guilty and be tried by a jury and at such trial to be confronted with and to cross-examine the witnesses against you, and by this plea you give up these and your other constitutional rights relating to trial by jury?	ye
9. *(if applicable)* Do you understand that, because you are not a citizen of the United States of America, this plea may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law?	—
10. Do you now personally plead (guilty) (no contest)?	ye
11. (a) *(if applicable)* Are you in fact guilty?	ye
(b) *(if applicable)* Do you understand that upon your plea of no contest you will be treated as being guilty whether or not you admit your guilt?	—
12. Have you agreed to plead as a part of a plea arrangement? Before you answer, I advise you that the Courts have approved plea negotiating, and if there is such, you may advise me truthfully without fear of incurring my disapproval.	ye

APPENDIX D

13. *(if applicable)* The prosecutor and your lawyer have informed the Court that these are all the terms and conditions of your plea. **Answers**

defendant's
① Upon Δ 3 plea of guilty the State will dismiss all pending charges in the 25th Judicial District, 91/845; 91/841; 91/842; 91/843; 91/844; unserved indictment
② The State will recommend 2 consecutive life sentences.

(a) Is this correct as being your full plea arrangement? yes✓
(b) Do you now personally accept this arrangement? yes✓

14. (Other than the plea arrangement between you and the prosecutor) has anyone made any promises or threatened you in any way to cause you to enter this plea against your wishes? No✓

15. Do you enter this plea of your own free will, fully understanding what you are doing? yes✓

16. Do you have any questions about what has just been said to you or about anything else connected with your case to this point? No✓

I am 30✓ years of age and have completed the 11th grade of school *(list any additional training)*

Taylorsville — Alexander Central Hi. Schl.

I have read or have heard all of these questions and understand them. The answers shown are the ones I gave in open court and they are true and accurate. Neither my lawyer nor anyone else has told me to give false answers in orde... have the Court accept my plea in this case. The conditions of the plea as stated on the reverse, if any, are accurate.

SWORN AND SUBSCRIBED TO BEFORE ME	
Date: 2-21-91	Date: 2-21-91
Signature Of Deputy Or Assistant CSC: Judy Matthews, Deputy	Signature Of Defendant: [signature]
	Name Of Defendant (Type Or Print): [illegible]

CERTIFICATION BY LAWYER FOR DEFENDANT

As lawyer for the defendant named above, I hereby certify that the conditions stated on the reverse, if any, upon which the defendant's plea was entered are correct and they are agreed to by the defendant and myself upon which the ... defendant's plea was entered. I further certify that I have fully explained to the defendant the nature and elements of the charges to which he is pleading.

Date	Signature Of Lawyer For Defendant
2/21/91	[signature]

CERTIFICATION BY PROSECUTOR

As prosecutor for the 25th Prosecutorial District, I hereby certify that the conditions stated on the reverse, if any, are the terms agreed to by the defendant and his lawyer and myself for the entry of the plea by the defendant to the charge in this case.

Date	Signature Of Prosecutor
2-21-91	Jason R. Parker

PLEA ADJUDICATION

Upon consideration of the record proper, evidence presented, answers of defendant, and statements of the lawyer for the defendant and the prosecutor, the undersigned finds:

1. That there is a factual basis for the entry of the plea.
2. That the defendant is satisfied with his lawyer.
3. That the defendant is competent to stand trial and that the plea is the informed choice of the defendant and is made freely, voluntarily and understandingly.

The defendant's plea is hereby accepted by the Court and is ordered recorded.

Date	Signature Of Presiding Judge
2-21-91	[signature]

APPENDIX E

W. THOMAS PORTWOOD, JR.
ATTORNEY AT LAW
THE CLINE BUILDING
260 FIRST AVENUE NW
HICKORY, NORTH CAROLINA 28601

MAILING ADDRESS
POST OFFICE BOX 1650
HICKORY, NORTH CAROLINA 28603

AREA CODE 704
TELEPHONE 328-2800

March 13, 1991

Earl James Watson
11060-06
1300 Western Boulevard
Raleigh, N.C. 27606

Dear Jim:

Thank you for your letter of March 5, 1991. I know it is difficult for you and I too have agonized over and over in my mind the unfairness of your case. In looking back over the events of your case, I can see signs that were not clear then, but are much clearer now.

While I have no hard proof, I believe that this sequence of events occurred shortly after Marcie and Tammy filed their charges in January, someone or something caused the D.A's office of become convinced they were on a mission from God to put Jim Watson away forever. I suspect that Marcie's story which was filled with distortions and exaggerations, got them all excited,

especially since she had been such a supporter of yours and had even helped prepare your defense.

Whether anyone else contacted the D.A's office, I don't know and we'll have no way of knowing unless someone slips and tells. At any rate, the new charges against you caused the courthouse gossip to start because I can remember hearing vague statements about your case before I was ever assigned to replace Ms. Goodman. It is reasonable to believe that the Court and the Judges heard these rumors also.

As I think back, it was probably blind luck that we had our first bond motion in from of Judge Brady, who had just been elected a Judge and probable hadn't time to become part of the network. It is no secret that the D.A.'s office did not want you out of jail and they were angry as hornets when you made bond and got out of jail.

Within minutes after you got out, someone called the D.A.'s office and Mr. Parker came screaming through the Courtroom yelling and cussing at me for helping you get out of jail. He ran back to the Judges chambers and whether anything was said, I do not know, because by the time I got there, everything was quiet.

As I told Jason Parker at that time, "Don't yell at me. It's my job to use all legal means available to me under North Carolina Law to keep my clients out of jail. If you want them in jail, then go by the law, don't ask me to help you keep them there!" Shortly after that, Mr. Parker got grand jury indictments and an order for arrest for you, even though you were still on bond for the district court warrants. What he did was legal but I've never seen it done in my years of practice.

After that, you and I both know what happened. Judge Ferrell placed a note in your file that you were to be brought before him to set a bond and then when we made a motion to set bond or continue you under the same bond, no decision was handed down

and further motions to set a bond were denied because the first motion was still pending.

As we neared trial and even up to the day of trial, it became increasingly obvious that someone wanted to put Jim Watson away permanently. At one point during the week of your trial, you were under indictments totalling 10 sexual offense charges and 2 kidnappings, which if convicted would have resulted in 10 life sentences plus 80 years.

As you remember, Judge Ferrell denied our Motion to Sequester the State's Witnesses. He was within his authority to do so because that was a discretionary motion and not appealable; but it was highly prejudicial and obviously those 15 - 20 women sitting in the audience in plain view of the jury, had an effect on the jurors minds.

After Judge Ferrell had ruled in favor of the State in allowing all of that whole group of "road lizards" to testify against you, I realized that we were no longer in a simple rape trial, we were literally fighting for Jim Watson's life and for giving him some chance to get out of jail. While I cannot prove this and of course no one from the State will admit it to me; I believe that the State's strategy at that point was to keep trying you on each of those indictments plus any others they could drag up and each time have all of the girls testify so that even if we got a not guilty verdict on at least 50% to 60% of the cases the jurors would return enough guilty verdicts to put you away forever.

As I said Thursday, I disagreed with Judge Ferrell's ruling. I believe that it was correct as the law now is in North Carolina however, I also believe that it was unfair and highly prejudicial and should have been denied on those grounds. We will never know whether the Court's decision was influenced by the fact that the State's case was being poorly presented and your case was being well presented.

Nonetheless, my presentation to you of the plea offer and my agreement to accept it was based exclusively upon my belief that the State had every intention of putting you in prison forever. As you remember, one significant part of the agreement was that the State would dismiss all pending charges. I'll send you a copy of the plea transcript but I'm sure we'll find no changes on it. They wouldn't be that foolish.

As to the actual time you are facing, no one except God really knows. You say your case analyst gave you a figure of 20 years. Your mother told me that Mr. Thomas, the District Attorney, said 10 years. As I told you in front of your mother and dad, I estimated it to be less than 20 but more than 10 based upon several factors:

a) the fact that we are dealing with Class (B) Felonies

b) good behavior and cooperation with the system while in prison

c) North Carolina's progressive attitude toward rehabilitation, parole and probation

d) my own personal observation of the Department of Corrections

Jim, I know it is difficult for you. Keep your courage up and cooperate with the rules and regulations. As you become settled within the system, time will pass more quickly. Your parents have asked Mr. John Crone to review your case. He is a fine lawyer and I have told him that he has access to my files of your cases at any time.

Sincerely,

/s/ W. Thomas Portwood, Jr.
W. Thomas Portwood, Jr.

WTP/dkb

APPENDIX F

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

In/Re: 90 CrS 10796; 10799 & 1080

State of North Carolina

vs.

Earl James Watson,
Defendant/Petitioner

TRANSCRIPT OF MOTION FOR APPROPR. HEARING

Newton, North Carolina

December 2, & 3 1991

Before: Honorable Charles Lamm, Judge Presiding

Appearances: Honorable Jason R. Parker, Assistant District Attorney, 25th Judicial District, For the State

John W. Crone, III, Attorney at Law, Hickory, North Carolina, For the Defendant/Petitioner

Ronald I Lancaster
Reporter

* * *

[8]

Q . Prior to trial did Mr. Portwood as your court appointed attorney talk with you about the various charges at various times in preparing for the trail. [sic]

A. Yes.

Q. How many time [sic] do you think that Mr. Portwood or how much time do you think that Mr. Portwood spend [sic] with you preparing for the trail? [sic] Was it a considerable amount of time?

A. Yes, We met, many many times. About three or four times and spent anywhere from forty five minutes to an hour each meeting.

Q. And had you decided to enter pleas of not guilty and to be tried upon all of the indictments that were currently pending against you during the week of February 21, 1991?

A. Yes sir.

Q. And if you would briefly describe to the court what happened right before . .. . say a day or two before and leading up to the actual trial of your cases . . . that is the begining [sic] of the trail. [sic[

A. Well, we were in the trail [sic] and everything was as far as I was concerned was going in my way . . . in my favor and the evidence looked good for me.

Q. Had the state commenced placing evidence on . ..

A. Yes sir. That is the only evidence that had been presented during the trail [sic] was the state's evidence.

Q. Well, a jury was selected, is that right.

A. Yes.

Q. And the state had started presenting their case?

[9]

A. Yes sir.

Q. And you remember what day of the week the trail [sic] started with the jury selection?

A. Monday.

Q . And the jry [sic] was selected on Monday.

A. Yes.

Q. And the state started their evidence that day, is that correct?

A. Yes and then Wednesday . . . .

Q. Let me ask you this. Prior to the trail [sic] of the case, had you and Mr. Portwood talked at all about the possibility of entering a plea in the case or any of the cases?

A. Yes. He met with me and we . . . he asked if I would accept a plea and I told him no, I didnt' [sic] want to plea on none of the charges.

Q. And you were maintaining you r [sic] innonence and that is why you were wanting to try the cases.

A.. Yes.

Q. Now going back to the trail, [sic] the jury was selected on Monday and the state started its evidence. Did you talk to your attorney on Monday evening about the possibility of entering a plea or were you still confident in going on with the trail. [sic]

A. He said that he felt good about the trail [sic] and I felt good about how the proceedings was going too, about the evidence that has been presented then.

Q. What happened the following day, Tuesday?

* * *

[13]

A. We never discussed wht [sic] I was pleading guilty to.

Q. Are you saying that you just discussed what kind of time that you would do.

A. Yes sir.

Q. And did you agree to enter the plea based on what kind of time Mr. Portwood said that you would get.

A. We discussed . . .. whenever we discussed that . . . . see he told me that once I got to central prison that there would be two or three lawyers to look over my case and the evidence and he felt confident that I would get another trail. {sic]

Q. What do you mean by the evidence? What kind of evidence?

A. Everything that was presented by the state and that type of thing. I had not gotten to call any witnesses or present no eye witnesses or facts for myself or nothing like that.

Q. Well, you did stand before the court and enter the pleas of guilty, didn't you.

A. Yes, I did.

Q. And you had a chance to review that plea of guilty or to look at the piece of paper that you signed and you talked about and answered the questions of the court on in open court.

A. Yes, I got to see this when I got down to prison.

Q. Once again, what did Mr. Portwood represent to you as to the time that you would actually have to serve based on the pleas that you were giving the court?

A. Ten to fifteen years.

[14[

Q. Was that total or on each count or what?

A. That was total time that I would have to serve on the two twenty years.

Q. Did he give you any rational [sic] behind why he thought or he represented to you that you would only do ten to fifteen years.

A. Let me think. Well, yes. See when we were in discussing the plea about the twenty years and that sentence would be cut in half once I gotin [sic] prison system and which would then be down to a ten year sentence and I would then have two ten year sentences actually. He went into detail explaining to me about gain time that I would be getting and the sentence would be cut in half.

Q. Based on those representations to you by Mr. Portwood, did you enter the pleas.

A. Yes.

Q. Now during the actual rendering of the plea, the court asked you a number of qestions, [sic] did it not.

A. Yes, it did.

Q. And those are or were the same quesions [sic] that Mr. Portwood had gone over with you before you came out here and entered the plea.

A. We didn't ever really set down and go over the plea. I answered and plead as I was instructed to answer the plea as we were sitting in the holding cell. That was the only way that it would work.

[15]

Q. How long were you with Mr. Portwood in the holding cell before you came out and gaveyour [sic] plea.

A. Pretty . . .. I was . . . . I was back there all through the lunch recess or break and tey [sic] took me down about fifteen or twenty minutes or probably twenty five to thirty minutes and I got back up and they were right back in there. My parents was back there part of the time.

Q. Mr. Portwood tell you what you were pleading to.

A. No, we never discussed what I was pleading to. All that I discussed was the time that I would spend in prison.

Q. And . . . now in your opinion was Mr. Portwood urging you to take the plea.

A. Yes, he was.

Q. What type of things did he say to you to urge you to take the plea.

A. Well, he was talking about such things as the maximum time and the time that I would be spending in there and the parole time and that I would be out on parole probably in a year or two. It was that the parole eligibility would be early and just all kind of stuff like that.

Q. Well, did you argue about taking the plea or did you take it on your own.

A. I first went in the holding cell before I went down to the lunch andfrom [sic] the time that I was back there we discussed that and we argued because I wanted to proceed with the trail [sic] and he wanted

* * *

[17]

A. Whatever he said he said but whenever he said life, I turned and questioned Mr. Portwood about that.

Q. Where were you?

A. We were at the table right there and I standing beside of him and we were both stading [sic] and the judge read the plea over and I was answering the questions and the judge said two natural life and I turned and looked at Portwood and asked him about it. I said, "Portwood, he said two natural lifes". He talked to me out of the corner of his mouth and said not to worry about that, he said, "everything is like I said it would be and just answer the questions."

Q. When he said everything was like I said it would be, what did you take that to mean.

A. I took that to mean the two twenty year sentences and that I would spend ten to fifteen years and have a chance for two or three lawyers to look over this and have a chance of getting things back here for another trail. [sis]

Q. Is that the reason that you entered the plea of guilty.

A. Yes.

Q. Do you recall the court advising you that the prosecutor and your lawyer had informed the court that thee are the terms of your plea, that upon the defendant's plea of guilty the state will dismiss all other pending charges against you inthe [sic] 25th Judicial Districtand [sic] the state will recommend two consecutive life snetences [sic] in these cases. Is thatthe [sic] language **[18]** that you heard and when you truned [sic] to Mr. Portwood and ask him about the two consecutive life sentences.

A. Yes, that is the part of it that he said he would get the other charges dismissed and some other dropped and then like I said, whenever the judge said two natural lifes, I was surprised to hear such and we talked back and forth between us then.

Q. Did Mr. Portwood advise you that no matter what the piece of paper said, the most time that you would do is the time that you have testified about today.

A. That is what I took it to mean. Whenever we talked and I asked about the two lifes, that is how I took it to be what he said. He said that did not mean nothingwhen [sic] the judge said two natural life.

Q. When you and Mr. Portwood walked in here and stood together to enter the pleas of guilty, what time did Mr. Portwood represent to you that you would do as a result of entering the the pleas of guilty on the date of February 21, 1991.

A. I would do ten to fifteen years.

Q. After you entered the pleas of guilty, did youat [sic] some time find out that in fact that was not the case as far as the actual time thatyou [sic] would have to serve in relationship to whatyou [sic] plead guilty to.

A. Yes. I talked to my case analyst in Raleigh and when I got to talk to my case analyst about the time, he said . . . you know. I **[19]** was telling him about the time I had and he said you have two natural lifes to do and he said you will ahve [sic] to do do twenty years on the first sentence before you become eligible forparole [sic] and you will have just as much time, that is twenty more years to do on the second sentence before you become eligible for parole.

Q. You found out in Raleigh that in fact that you had to serve the full twenty years based on the life sentence that you had received before even becoming eligible for parole.

A. I would do the forty years before that.

Q. Is that different from what Mr. Portwood represented to you before you entered the pleas.

A. Yes.

Q. And if you had known that you were going to get . . . . that you would actually have to serve the time you referred to, that is the not being eligible for parole for forty years, would you have entered the pleas.

A. No I would not.

Q. Was the pleas that you entered based upon the representations of Mr. Portwood about what time that you would actually serve?

MR. PARKER: Objection. Been asked and answered.

COURT: Overruled.

Q. Was it sir.

A. Yes sir.

Q. Shortly after entering the pleas on February 21, 1991, did you **[20]** receive a letter from Mr. Portwood, dated March 13, 1991.

A. Yes, I did.

Q. And I will hand you what is marked as the defendant's exhibit "B" and that is contained in the motion we filed and which has been stipulated into evidence and I ask you sir if that is the letter that you received from Mr. Portwood.

A. Yes, that is a copy of that letter.

Q. And if you will flip to the last page of that letter, is there any portion that is highlited [sic] that discusses Mr. Portwood representations to you prior to entering the plea.

A. Yes.

Q. That is a part of the court records now.

A. Yes.

Q. Does that reaffirm in your mind what Mr. Portwood had told you prior to your coming in court and entering the plea in this case.

A. Yes that is pretty much what he told me in the holding cell back out there.

Q. Have you since this letter and since your conversations with your case analyst come to understand that under the two life sentences that you are presently serving, that you are not eligible for parole on either one of those until you serve a minimum of twenty years foreach [sic[sentence.

A. Yes, that is right.

Q. The conversation that took place between Mr. Portwood and you

* * *

[36]

A. In my view when Judge Ferrell rules that the evidence of the four other ladies may come in, it was fatal to our case based on what I believed would be the perception of the jurors after hearing and seeing the sequence of events and the testimony of the witnesses.

Q. Now in your letter of March 13, 1991, to Mr. Watson, you seem to emphasis [sic] or relate some things that you had told him priio [sic] to the entry of the plea about what kind of time that he wold [sic] be serving if he plead guilty to what he was pleading guilty to in the plea transcript, is that correct?

A. Yes, that is correct.

Q. And I think in the letter you stated that in your opinoin [sic] he would do less than twenty but more than ten years and that was based on several factors outlined in your letter, it that right.

A. I believe in my letter and during mu discussions with Mr. Watson, I was referring to my most recent reading of an article published in the True Bill regarding the sentences and what a defendant might likely expect from sentencing in North Carolina.

COURT: Did you tell him before he entered the plea in the transcript, that you thought that he would serve more than ten but less than twenty.

A. I believe . . . . my best recollection was that we discussed what a life sentence would mean in North Carolina and as I understood it there were three types of Class "B", "A" and "C" [37] life and that while other felonies were required to receive credit for good time that the Secretary of Corrections under G.S. 143-13(b) was authorized to give good time credit for Class A, B and C . . . .

COURT: Well, I want to find out sir, what you told him to the best of your recollection and your word to him.

A. Roughly translated, your Honor, I felt like that he would do less than twenty years for each consecutive Class "B" life sentence that he was pleading to that he was sentenced for.

COURT: Did you tell him sir, that was based on the Secretary of Correction having the authority to grant gain time credit in Class "B" life sentences?

A. I told uim [sic] that was my opinion and recollection of the law in North Carolina. I did not specificlaly [sic] say that quoting the statute number but refered [sic] to my or the article in the True Bill.

COURT: You told him that to the best of your recollection that the Secretary of Corrections had the authority to grant gain time?

A. No, good time, your Honor and not gain time.

COURT: Based on that understanding of the artcile. [sic]

A. Yes.

COURT: And what did you tell him based on that.

A. I told him that based on that, that I estimated and while I did not have any way of knowing and could not promise him anything, that I would estimate that he would do less than twenty **[38]** twenty years each for the consecutive class "B" life sentences that he would receive.

COURT: Okay, you may continue.

Q. Mr. Portwood, in the letter you wrote to Mr. Watson, you ended up by saying, as I told you in front of your mother and dad, I estimate it to be less than twenty but more than ten based upon several factors . . . .

MR. PARKER: Objection, the letter is in evidence.

COURT: Well, I have the letter right here and I can see what it says.

Q. My point is, the things that you are saying, that you have said in front of him, contained in the letter, are those the things that you said in front of him prior to his entering the plea.

A. Yes, as best that I can recollect. This letter was written March 13th and it was shortly after our conversation in the holding cell back there. I expressed that as closely as I could recall from my own personal recollection as to exactly what I told him back in the cell back there.

Q. Are you of the opinion that based upon your representation to him about what time thathe [sic] would actually be looking at and seving [sic], was a consideration for him in entering the plea in this matter.

MR. PARKER: Objection.

COURT: Overruled.

[39]

A. I believe that Mr. Watson has testified to that effect day. [sic]

Q. And in fact what you had represented to him as thinking to be correct then was in fact incorrect in view of the North Carolina general statute 15A-1371, which in fact state [sic] that prisoners serving life imprisonment with no minimum term are eligible for parole after srving twenty years.

A. I believe that .... let me make sure I am answering what you are asking me. It believe what I advised Mr. Watson was under the G.S> 148.13(b), where the Secretary ofCorrection [sic] had the authority to grant good time and that was based on the reading of the article and the statute andyou [sic] are relying on the other statute under 15A. My reading of the article must have been incorrect.

MR. CRONE: That is all.

CROSS BY MR. PARKER:

Q. Mr. Portwood, early that day after Marcie Eckard testified, you truned [sic] to me and asked what I would offer on a final plea, didyou [sic][not.

A. That is correct.

Q. And my first respond [sic] was that I was not giving you anything.

A. Ibelieve [sic] it was something that you would not give us air in a jug or something to that effect.

Q. And but over the noon time recess you came back to me and we spoke back in the judge's chambers and I indicated that if he would plead guilty as charged, that is what he was being tried

* * *

[47]

first and slightly less than twenty on the second on..

A. Yes.

Q. And is that whatyou [sic] explained to him.

A. Yes.

MR. PARKER: That is all.

RE-DIRECT BY MR. CRONE:

Q. You ever explain to him that he would be eligible for parole on the sentences until a full twenty years on each were served.

A. No. Mr. Crone, I did not tell him that.

MR. CRONE: That is all.

COURT: Did you tell him that he would be eligible for parole any sooner than the two twenty years.

A. Your Honor, I did not give him any specific parole eligibility date. My understanding was that these both were Class "B" felonies, and it would less than twenty years but certainly more than ten years and he would become eliiigible for parole but I did not give him any date, no sir.

COUT: [sic] Anything further?

MR. CRONE: No sir.

COUT: [sic] I have a few if I may. Mr. Portwood, did you ever tell him that he would probably only serve ten to fifteen years?

A. No sir, I did not.

COURT: You ever tell im that twenty years sentence on each

* * *

[59]

Jimmy entere [sic] a plea.

A. It was that morning about eleven on Wednesday.

Q. Were you present in the holding cell with you son andwith [sic] Mr. Portwood and your husband during the discussions about the plea.

A. Yes sir.

Q. What did you hear and by whom.

A. Well, we got back there and Attorney Portwood said, Jimmy, you need to enter a guilty plea and tat [sic] if he didn't he could get up to ten life sentences and Jimmy states, I am not guilty and I don't want to enter a plea of guilty and he said Igot [sic] witnesses to prove that I didn't kidnap the girl and that I didn't rape her or them.

Q. Then what happened.

A. Then Mr. Portwood told him that if he wold [sic] plead guilty he would get two twenty year and break in half and that he would get gain time and he probably wold [sic] be out within ten and not more than fifteen years and when it came out with that in the paper and all our friends started calling our house that iswhen [sic] we realized that Jimmy . . . .

MR. PARKER: Objection

COURT: Sustained.

Q. Did you later find out that he got two consecutive life sentences.

A. Yes sir.

Q. Now going back to the discussion about the time that Jimmy **[60]** would have to do as represented to him by his lawyer, did you talk withyour [sic] son about whether to enter the plea based on that time.

A. Well, we just all were back in there like he said and I was crying and hed was upset and we didn't have probably ten minutes or fifteen minutes there with him. No, I didn't tell him to enter the plea.

Q. You let him make up his own mind about that.

A. We let him make up his own mind, yes.

Q. But did you talk to him about what kind of time that he would have to do to serve.

A. Yes. Portwood told us that he would be serving less than ten . . . . less than twenty butmore [sic] than ten and it would be out in about ten to fifteen years. He did not tell us that he was getting no consecutive life sentences. That was not mentioned back there in the holding cell.

Q. Would . . . . could the statement have been that was the time that he was going to get and not the time that he would serve?

MR. PARKER: Well, objection.

COURT: Overruled.

Q. Was it your understanding andyour [sic] son's understanding . .. .

MR. PARKER: Object to his understanding, your Honor.

COURT: Sustained.

Q. What it your understanding based on Mr. Portwood's conversation with you and your son, that if Jimmy entered a plea that he would **[61]** be going and doing like fifteen to twenty years .... no, ten to fifteen years and that is what we left the jail that day thinking and believing.

Q. And thatwas [sic] the amount of time that he would be doing?

A. Yes sir.

Q. And you found out that he or that was not true when you read the newspaper.

A. No. Jimmy questioned Portwood when Judge Ferrell said two life sentences out here when the judge was asking the questions and but we were taking Mr. Portwood's work back there and what was discussed with him after the trail [sic] and he told us it was just like it was going to be and it had not changed the sentence and Jimmy was still getting what he told us, two twenty year and that would be broke down in half and with gain time ten years or fifteen at the most. We left the courthouse believing that and I think I called youand [sic] talked to you about that on phone. Then later on my friend who is here in the court today and I went up there and talked to him in his office on Friday afer [sic] sentence was given to Jimmy on Wednesday and he told us not to believe what we raad in the newspaper or what nobody was saying, that Jimmy sentence was just like he told us it would be and that it had not changed from what he told us back in this holding cell.

Q. As to the time that he would have to serve?

A. Yes, that's right. He said that it would still just be like

* * *

[68]

Q. Basely [sic] what you are testifying to is what Mr. and Mrs. Watson told you?

A. Yes and what I read in the paper.

MR. PARKER: That is all.

MR. CRONE: That is the evidence for the defendant, your Honor.

COURT: Very well, we will break for lunch now and come back at 1:30 and resume at that time. Does the state desire to call witnesses?

MR. PARKER Yes, one.

(The court recessed at 12:35 and reconvened at 1:40 p.m.)

COURT: Mr. Crone, I believed when we recessed for lunch you had rested?

MR. CRONE: Yes, that is correct, your Honor.

STEVE EHLERS was called as a witness for the state, first being duly sworn, testified as follows:

DIRECT BY MR. PARKER:

Q. State your name and occupation to the court.

A. Steve Ehlers, I am a licensed private investigator.

Q. How long have you been so employed as a private investigator.

A. January of 1983.

Q. And I believe that you wre [sic] appointed to assist Mr. Watson in his defense in this cae, is that correct?

A. Yes, I was.

Q. And when was that sir?

[69]

A. I don't recall the specific date or the time, but some time after the last charge, I was contacted by the attorney, Mr. Portwood, to assist him in the defense.

Q. There has been testimony concerning the discussion concerning the plea between Mr. Portwood and MrWatson [sic] at the time of the trail [sic] and it was indicated that you were present during that time or those discussions.

A. Yes sir.

Q. You recall what was said between Mr. Portwood and Mr. watson during that time?

A. Some of it.

Q. What do you recall that was said by Mr. Portwood to him concerning the sentence at the time of that conversation.

A. The conversation that I recall took place in the holding cell back here behind this courtroom. That occurred some time around lunch hour on the Thursday 21st and that conversation took place when Jimmy was removed back to the holding cell at the recess and as I recall he and I went back there right after the recess and I think Mr. Portwood had been delayed in talking to you for some period of time. Then Mr. Portwood came into the room and had a conversation with Mr. Watson and it was on the subject of MrWatson [sic] entering a plea in the case.

Q. What do you recall Mr. Portwood saying to your recollection or in explaining any plea to him.

A. I think at the time that he told him that it had been suggested **[70]** or that you had tendered the plea of two life sentences but

as far as any specify [sic] charge or charges that he would be pleading, I dont' recall that, no.

Q. But it was indicated by Mr. Portwood to Mr. Watson that he would be entering a plea and receiving two life sentences.

A. Yes.

Q. Do you recall wehther [sic] or not the information that he gave him was on sucrrently [sic] or consecutive sentences?

A. I dont [sic] think there was any discussion as to the method as to whether it was current or consecutive. I know that Jimmy asked me what I thought and I told him that given the nature of the charges and given my knowledge of Judge Ferrell which I have known since 1973, that he could expect the worse.

Q. If he was found guilty of the charges by the jury.

A. Yes.

Q. That is what you told him.

A. Yes sir.

Q. Were you there when mr. Portwood made any indication as to what amount of time that he might receiee?

A. Yes.

Q. And to your recollection what did Mr. Portwood tell him.

A. He spoke about two Class "B" felonies, and that he could expect or he was looking at twenty years per felony.

Q. You recall any conversation about any lawyer in Raleigh looking at his file or what Mr. Watson could do after he got in the system?

* * *

[75]

prior to coming out here and entering the plea.

A. I got the indication that Jimmy thought by taking the plea that there was a little light at the end of the tunnel as opposed to if he continued with the trail [sic] and was convicted of all the counts, that his parents would never see him a free man again during their natural life. That was the indication that I got.

Q. It is your indication then from your recollection of that meeting that it was represented to Jimmy that if he took the plea that his parents would see him out within their natural life.

A. Yes, Igot [sic] that impression.

Q. And after the meeting back there, prior to the entry of the plea, did Mr. and Mrs. Watson appaoch [sic] you and talk to you about any sentence or any time.

A. I think we walked . . . . talked briefly back here at the entrance to the courtroom. I think that they took Jimmy and went in the courtroom and Jdge {sic] Ferrell allowed Jimmy and his parents to meet griefly back there for a perido [sic] of time and I spoke to Mr. and Mrs. Watson then, but as far as the time he had to servie, I think that all had been said in the cell back there.

Q. Was it yourunderstanding [sic] from the meeting back int he [sic] room, that it was represented to Jimmy that the plea transcript would say that he would have to serve two consecutive life sentences?

[76]

A. I ton's know if I remember that. I do remember that itwas [sic] my impression and also that of Jimmy for he asked me if it was left up to the discretion of Judge Ferrell whether to run it concurrently or consecutively and in my opinion I told him it would run consecutively.

Q. Was that the two twenty year sentences or the two life sentences.

A. The two twenty year sentences. I was thinking twenty on each of the charges.

Q. That was based on your observation of what happened back in the room between Jimmy and his lawyer prior to the entry of the plea.

A. Yes.

MR. CRONE: That is all.

RE-DIRECT BY MR. PARKER:

Q. Di you and I discuss prior to today anything about what was said back in the area back there that you all were in.

A. No. You called me and I told you that I felt it was not proper for me to discuss anything with you for I felt it was privilege and I wouldnot [sic] talk to you about it.

Q. And you went back there with Mr. Portwood or was back there at the timethat [sic] Mr. Portwood went over this transcript of plea with Mr. Watson, is that correct?

A. I was back there when Mr. Portwood had the plea form in his hand and was going over the questions with him, yes.

* * *

APPENDIX G

STATE OF NORTH CAROLINA
PAROLE COMMISSION
831 West Morgan Street
Raleigh, 27803-1613
Telephone: 733-3414

JAMES G. MARTIN
GOVERNOR

LOUIS G. COLOMBO
CHAIRMAN

COMMISSION
illegible

December 3, 1991

Mr. John W. Crone
Attorney-at-Law
Post Office Box 2507
Hickory, North Carolina 28603

Dear Mr. Crone:

Per our conversation, this is to advise that inmates receiving Life sentences for Class A and Class B Felonies are required by law to serve 20 years before parole eligibility. The law does not permit reductions for good or gain time credit in these instances.

The Parole Commission does not have any published rules or regulations concerning parole eligibility.

Please contact me at your earliest convenience if you have any questions concerning this matter.

Sincerely,

/s/ Sam F. Boyd
Sam F. Boyd
Executive Director

SFB/slj

APPENDIX H

The True Bill

North Carolina Bar Association/
Criminal Justice Section Newsletter

Vol 10, No. 2 July 1990

Sentences In North Carolina — The Long and Short Of It

By Robert C. Ervin

Editor's Note: This article, which was originally published in the June issue of General Practice, is reprinted with permission.

Every criminal defendant who faces a prison term asks a similar question. "If I get convicted, how long will it be before I get out? If I take this plea, how long will I be in prison?"

Providing guidance for your client is essential to properly advising your client whether or not to plead as well as consoling your client if a guilty verdict is returned.

But in a state with overflowing prisons and a changing parole environment, giving advice concerning how much time an inmate will actually serve can be a hazardous form of guesswork. This article seeks to provide assistance to attorneys advising clients who ask, "*How much time will I serve?*"

Calculation Of A Defendant's Sentence

The initial focus in determining a prisoner's release rests on a calculation of the amount of time the inmate will serve Once a defendant is sentenced, three credits work to reduce the actual incarceration required to serve a particular sentence.

Credit For Time Served Pending Trial

When a judgment is entered ordering the imprisonment of a defendant, the term of imprisonment commences on the date the order is entered unless otherwise specified. N.C.G.S. § 15A,1353(a). The minimum and maximum term of a sentence is credited with or reduced by the total amount of time a defendant spent in pre-trial confinement in any state or local correctional facility as a result of the charge that culminated in the sentence N.C.G.S. § 15-196.1.. The credit begins to accrue on the date the defendant was first placed in custody and includes tune spent in custody pending trial, trial *de novo,* appeal, retrial or a pending parole and probation revocation hearing. *Id.*

The sentencing judge is required to determine the credits to which the defendant is entitled and to cause the clerk to transmit to the appropriate prison or jail officials a statement of the allowable jail credits. N.C.G.S. § 15-196.4. This determination is a portion of the form Judgment and Commitment Order utilized in both District and Superior Courts.

"*Good Time*" *Or Good-Behavior Credit*

In addition to credit for time spent in pre-trial confinement, a defendant is eligible to receive credit for good behavior under N.C.G.S. § 15A-1355(c).

The department of correction and jailers *must* give credit for good behavior toward service of a prison or jail sentence imposed for a felony that occurred on or after the effective date of the Fair Sentencing Act. *Id.* The requirement does not apply to class A or class B felons, class C felons serving life terms, or to defendants who receive a term of special probation under N.C.G.S. §§ 15A-1344(e) or l5A-1351(a) (commonly referred to as a split sentence). *Id.;* N.C.G.S. § 14813.

The secretary of correction is authorized to issue regulations for credits to class A, class B and class C felons who are serving

life sentences. N.C.G.S. § 148-13(b). A prisoner in jail or the department of correction serving a felony sentence shall receive credit for good behavior at the rate of one day deducted from the sentence for each day spent in custody without a major infraction of prison conduct rules. N.C.G.S. § I5A-1340.7(b). The good-time credit effectively permits one day of incarceration to count as two days served.

Gain-Time Credits

Gain-time credits may be awarded to inmates for meritorious conduct and shall be granted for performance of regular work and regular participation in study, training, work release and other rehabilitative programs. N.C.G.S. § 148-13(d). Gain time is awarded at three rates.

Rate one (gain time 1) authorizes a credit of two days per month to prisoners who perform work assignments requiring at least four hours of actual work per day and to prisoners who participate in study, training or other rehabilitative programs requiring at least four hours of productive activity per day. N.C.G.S. § 148-13(d)(1).

Gain time II permits a credit of four days per month to prisoners who perform work or participate in such programs at least six hours per day. N.C.G.S. § 148-13(d)(2).

Gain time III allows awards of six days credit per month to prisoners who perform work assignments requiring special skills or special responsibilities at least six hours per day, prisoners in full-time work release programs and prisoners who participate in full-time study, training and other rehabilitative programs. N.C.G.S. § 148-13(d)(3).

In addition to these statutorily prescribed rates for gain time, the secretary of correction may grant gain-time credit to an inmate for meritorious conduct or emergency work performed. N.C.G.S. § 148-13(d). Gain-time credits are not available to

special probationers serving split sentences, or to class A and B felons or to class C felons serving life sentences. N.C.G.S. §148-13(b) and (f).

Example Of Application Of Credits

By way of illustration, let's consider the effect of these credits on a hypothetical inmate sentenced to a five-year term of imprisonment for breaking and entering a building in violation of N.C.G.S. § 14-54.

Having spent three months in pre-trial confinement, the hypothetical inmate would receive credit for that three-month term of incarceration already served. The inmate would be eligible to receive two and one-half years of good time credit. If the inmate was eligible for full-time work release, the inmate could receive gain-time credits at the rate of six days per month or 72 days per year.

The actual time needed to serve out the sentence, without considering parole eligibility, would be approximately 23 months from the date the sentence was imposed. The credits reduce the actual time served after sentencing to roughly 40 percent of the total sentence

Parole Eligibility

A prisoner's release is usually the result of parole in some form. An inmate's eligibility for parole depends upon the underlying offense for which the inmate was convicted and the type of sentence which was imposed. There are four broad categories for parole eligibility and each category varies in terms of the prisoner's parole prospects.

Felons

Felons, excluding those with life sentences and committed youthful offenders, are eligible for parole under three primary means.

The first type of parole for felons is "re-entry parole" The parole commission *shall* parole each felon serving a term of 18 months or more 90 days before the expiration of the sentence N.C.G.S. § 15A-1380.2(a). The term of incarceration for the purposes of re-entry parole includes credits for pre-trial confinement, good time and gain time *Id.*

Felons also are eligible for "early parole" nine months prior to the discharge date otherwise applicable and six months prior to the date of the automatic re-entry parole N.C.G.S. § 148-4.1(c).

Finally, most felons are eligible for "community service parole" Community service parole is early parole for the purpose of participation in a program of community service under the supervision of a probation/parole officer. N.C.G.S. § 15A-1380.2(h). The community service parolee must perform 32 hours of community service for every month of the remaining active sentence until completing at least the minimum sentence, or until one-half of the sentence has been completed as a condition of parole *Id.*

Eligibility for community service parole is available to a prisoner:

(I) Who is serving an active sentence the term of which exceeds six months;

(2) Who, in the opinion of the parole commission, is unlikely to engage in further criminal conduct;

(3) Who agrees to complete service of the sentence as herein specified (who agrees to community service obligation; and

(4) Who has served one-half of the minimum sentence (if sentenced prior to July 1, 1981), or one-fourth of a sentence imposed under N.C.G.S. § 15A-1340.4.

See N.C.G.S. § 15A-1380.2(h) (parenthetical added). The service requirements in the fourth qualification for community service parole include good-time and gain-time credits. Felons incarcerated for rape, sex offenses, kidnapping, child abduction, felonious restraint or drug trafficking are not eligible for community service parole *Id.*

Again, an example may clarify these parole options. Consider the parole eligibility of a defendant convicted of involuntary manslaughter, who has no jail credit, and who received the maximum sentence for a class H felony —10 years. This defendant would become eligible for community service parole (assuming gain time at the gain time III rate) after serving roughly one year.

This hypothetical inmate also would be eligible for early parole after serving three years and three months pursuant to N.C.G.S. § 148-4.1(c). Eligibility, however, does not ensure release on parole. This inmate would be released on re-entry parole, if not released earlier, after being incarcerated for three years and nine months based on the above assumptions.

Committed Youthful Offenders

A committed youthful offender is a person under 21 years of age in the custody of the secretary of correction, or a person under 25 years of age who is in the custody of the secretary of correction but who has not been convicted of a violent or a class A, B, C, D, E, F or G felony. N.C.G.S. § 148-49.11.

A trial court judge at the time of sentencing may, in the exercise of discretion, designate a defendant as a committed youthful offender. N.C.G.S. §§ 15A-1351(e) and 148-49.15. A committed youthful offender may be paroled under supervision at any time after reasonable notice to the secretary of correction. N.C.G.S. § 148-49.15(a). It is not necessary for a committed youthful offender to serve one quarter of the sentence before becoming eligible for parole *Id.* A committed youthful offender,

who is not paroled earlier, also may be released on parole within the last 90 days of the maximum term of commitment. N.C.G.S. § 148-49.16(c).

Parole Of Felons With Life Sentences

Felons, either class A, class B or class C with life sentences, are subject to less favorable parole eligibility provisions than other felons. This category represents felons serving life sentences. N.C.G.S. § 14-1.

A prisoner who is serving a life sentence is eligible for parole after serving 20 years. N.C.G.S. § 15A-1371(a), (al). Class C felons with life sentences are eligible for good-time credits pursuant to regulations issued by the secretary of correction. N.C.G.S. §148-13(b).

Misdemeanants

There are three forms of parole available for inmates incarcerated on misdemeanors. First, an inmate imprisoned for a misdemeanor whose sentence does not include a minimum term is eligible for parole at any time. N.C.G.S. § I5A-1371(a). This automatic eligibility is not available to defendants whose sentences include a minimum term of imprisonment.

A prisoner serving a misdemeanor sentence which includes a minimum term of imprisonment is eligible for release on parole only upon completion of the service of that minimum term less good-time and jail credit, or one-fifth of the maximum penalty allowed by law for the offense less good-time credit and jail credit (whichever is less). N.C.G.S. § I5A-1371(a).

By way of example, a defendant who was convicted of assault on a female and sentenced to a minimum/maximum sentence of one year and who has no jail credit, would be eligible for parole upon the completion of roughly 2-1/2 months.

In addition, misdemeanants sentenced to not less than 30 days nor as much as 18 months may be released upon completion of one-third of the maximum sentence unless the parole commission finds:

- a substantial risk that the prisoner will not conform to reasonable conditions of parole,
- the prisoner's release would unduly depreciate the seriousness of the crime or promote disrespect for the law,
- continued correctional treatment, medical care, vocational training or other training would enhance the inmate's ability to lead a law-abiding life if released later, or
- there is a substantial risk that the inmate will engage in further criminal conduct. N.C.G.S. § I5A-1371(g).

The eligibility for one-third parole is not determined by including any good-time credit. The defendant considered above would be eligible for one-third parole after completing a four month term of incarceration.

Effect Of The Prison Population Cap

Recent news stories have covered both the department of correction's problems arising from a population in excess of the prison cap and a recent special session of the legislature to raise the population cap. The prison cap, initially set at 18,000 inmates, was increased in three steps by a recent amendment to N.C.G.S. § 148-4.1.

On March 28, 1990, the cap was raised to 18,525 inmates. The cap rose to 18,650 inmates on May 15. Finally, the cap will reach 18,715 inmates this summer, effective June 15.. The raising of the cap was designed to alleviate the pressure on the department of correction and the parole commission to lower the overall prison population by releasing inmates.

The prison population cap law provides for certain more favorable parole opportunities. These provisions come into play when the population cap is triggered. The triggering mechanism is the number of prisoners housed in facilities owned or operated by the state of North Carolina for the division of prisons.

When the number of inmates exceeds 98 percent of the cap for 15 consecutive days, the secretary of correction must notify the parole commission and the commission has 90 days to parole a sufficient number of inmates to reduce the prison population to 97 percent of the cap. N.C.G.S. § 148.4..1 as amended by Chapter 1, House Bill 1 of the Extra Session 1990 of the General Assembly.

Triggering the prison population cap creates accelerated parole opportunities for misdemeanants and certain parole-eligible felons. From the date of the notification that the cap has been triggered until the date the prison population is reduced to 97 percent of the cap, persons imprisoned only for misdemeanors are eligible for parole upon admission except for those convicted of impaired driving or other offenses involving impaired driving. N.C.G.S. § 148-4.1(e).

Some felons also receive more favorable parole consideration. The parole commission, in the event that the cap is exceeded, also loses its discretion to refuse parole N.C.G.S. § 148-4.1(f).

However, in its efforts to meet the requirements of the prison cap law, the parole commission cannot consider rapists, sex offenders, kidnappers, child abductors, persons convicted of felonious restraint, drug traffickers or murderers for more favorable parole. N.C.G.S. § 148-4.1(g). The suitability of these offenders for parole is determined in accordance with the ordinary non-cap parole process. *Id.*

Limitations Of Discussion

These general guidelines for parole eligibility must be recognized as rough estimates, because of certain inherent limitations. First, the analysis has focused on the existing parole structure in effect at this time Inmates sentenced earlier, particularly those sentenced prior to the enactment of the Fair Sentencing Act, may be subject to a different parole scheme

Second, any discussion of parole with a client must be carefully undertaken. The discretionary nature of parole precludes counsel from advising a client with absolute certainty regarding the amount of time that a particular client actually would serve. Moreover, uncertainty arising from the discretionary nature of parole is exacerbated by uncontrollable variables such as the actual gain-time rate a client will receive or the triggering of the prison population cap. Variables such as these can significantly affect a particular inmate's parole prospects.

Finally, other statutory provisions may effectively suspend the rules of the game. For instance, a defendant convicted of armed robbery, who is not a committed youthful offender, has a minimum sentence of seven years, excluding gain time. N.C.G.S. § 14-87(d). Particular statutes, therefore, can suspend the normal parole options. Consequently, any effort to predict a defendant's parole release in advance is limited by these considerations.

Prison Term Chart

	Credits Available	Parole	Cap In Effect
Misdemeanants	1. Jail Credit 2. Good Time	1. *No Minimum Sentence*—Eligible at any time 2. *Minimum Sentence*—Eligible after completing minimum sentence or one-fifth of statutory maximum, whichever is less. 3. Eligible upon completing one-third of maximum sentence if sentenced to more than 30 days and less than 18 months (does not include good time)	Immediate release available except for impaired driving convictions.
Felons	1. Jail Credit 2. Good Time 3. Gain Time	1. *Re-entry Parole*—Eligible 90 days before expiration of sentence 2. *Early Parole*—Eligible nine months before expiration of sentence or six months prior to re-entry parole 3. *Community Service Parole*—Eligible after serving one-fourth of sentence if not within list os excluded offenders	Parole commission loses discretion to refuse parole if over cap for offenders not within prohibited group

Committed Youthful Offenders	1. Jail Credit 2. Good Time 3. Gain Time	Eligible for parole at any time	No special provisions
Felons with Life SEntences	1. Jail Credit 2. Good Time For Class C Felons Only	Eligible after serving one-fifth of life sentence or 20 years	No special provisions

STATE OF NORTH CAROLINA

File No. 90 Crs 10799

Catawba County — Newton Seat Of Court

In The General Court Of Justice
☐ District ☒ Superior Court Division

NOTE: *(This form is not to be used for multiple offenses unless they are consolidated for judgment.)*

STATE VERSUS

Defendant: Earl James Watson

Race	Sex	DOB	Pre-FSA Felony
W	M	10-30-60	☐

JUDGMENT AND COMMITMENT

G.S. 15A-1301

Attorney For State: Jason Parker — ☐ Def. Found Not Indigent ☐ Def. Waived Attorney

Attorney For Defendant: Thomas Portwood — ☒ Appointed ☐ Retained

☐ DWI Offense — Level Of Punishment (G.S. 20-179)

Driver's License No. (DWI Only) — State (DWI Only)

The defendant ☒ pled guilty to: ☐ was found guilty by the Court of: ☐ was found guilty by a jury of: ☐ pled no contest to:

File No.(s) And Offense(s)	Date Of Offense	G.S. No.	Fel./M.	Class	Max. Term	Presumptive
90 Crs 10799						
Count #1 First Degree Kidnapping	7-12-90	14-39 A &B	Fel	D	40 Yrs.	1 Yr.
Count #II Sexual Offense, First Degree	7-12-90	14-27.4 A2	Fel	B	Life	N

The above offenses are consolidated for the purpose of judgment.
The Court having considered evidence, arguments of counsel and statement of the defendant Orders that the defendant be imprisoned

for a term of: Natural Life to run concurrently

in the custody of the ☒ N.C. Dept. of Correction ☐ Sheriff of _____ County

The defendant shall be given credit for 0 days spent in confinement prior to the date of this Judgment as a result of this charge.

☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

☐ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:
(NOTE: *List the Case Number, Date, County And Court In Which Prior Sentence Imposed.*)

(check all that apply)

☐ The defendant shall serve as a committed youthful offender pursuant to G.S. Chapter 148, Article 3B.

☐ The defendant should not obtain the benefit of release pursuant to G.S. 148-49.15.

☐ The defendant shall pay the costs.

☐ The defendant shall pay a fine of $ _____

☐ Immediate work release is recommended pursuant to G.S. 148-33.1. ☐ Work release is recommended. ☐ Work release is not recommended.

☐ With the consent of the defendant, work release is ordered under the conditions set forth in the attached order *(applies to misdemeanants only)*.

☐ The Court does not recommend that the defendant be required to pay restitution or reparation, as a condition of parole if parole is granted, or from his earnings if work release is granted.

☐ The Court recommends that the defendant be required to pay, as a condition of parole if parole is granted, or from his earnings if work release is granted, the items and amounts set out below.

Fine	Costs	Restitution	Reimbursement For Counsel Fee(s) And Other Expenses	Total Amount Due
$	$	$	$	$

Names and address(es) of aggrieved party (parties) to receive restitution *(specify amount if more than one aggrieved party)*

Material opposite unmarked squares is to be disregarded as surplusage.

The Court further recommends:

FOR USE WITH FAIR SENTENCING ACT FELONIES ONLY

The Court has considered the aggravating and mitigating factors in G.S. 15A-1340.4(a) and

☐ makes no written findings because the prison term imposed does not require such findings.

☐ makes no written findings because the prison term imposed is pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.

☒ makes written findings set forth on the attached Findings of Factors in Aggravation and Mitigation of Punishment (AOC-CR-303).

AWARD OF FEE TO COUNSEL FOR DEFENDANT

☐ A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT

It is ORDERED that the Clerk deliver three certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until he shall have complied with the conditions of release pending appeal.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*
2-21-91	Forrest A. Ferrell	Forrest A. Ferrell

APPEAL ENTRIES

☐ The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order shall remain in effect. ☐ except that:

☐ The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on Form AOC-CR-350.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*

ORDER OF COMMITMENT AFTER APPEAL

Date Remanded To District Court	*Date Appeal Dismissed*	*Date Withdrawal Of Appeal Filed*	*Date Appellate Opinion Certified*

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the Sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official three certified copies of this Judgment and this Order as authority for the commitment and detention of the defendant.

Date	*Signature Of Clerk*
	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

☐ Findings Of Factors In Aggravation And Mitigation Of Punishment (AOC-CR-303)
☐ Determination Of Sentencing Factors In DWI Cases (AOC-CR-311)
☐ Appeal Entries (AOC-CR-350)

Date	*Signature And Seal*
2-22-91	Carol Lewis
Date Certified Copies Delivered To Sheriff 2-22-91	☐ *Deputy CSC* ☑ *Assistant CSC* ☐ *Clerk Of Superior Court*

AOC-CR-301, Side Two
Rev. 3/87

Material opposite unmarked squares is to be disregarded as surplusage.

EXHIBIT E

STATE OF NORTH CAROLINA

Catawba County

File No. 90CRS10799

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Defendant

Earl James Watson

FELONY JUDGMENT
FINDINGS OF FACTORS IN AGGRAVATION AND MITIGATION OF PUNISHMENT

G.S. 15A-1340-4(a)

NOTE: *Separate findings of aggravating factors and mitigating factors should be made for each offense. Only one factor should be found under each numbered item for which there are alternatives listed.*

AGGRAVATING FACTORS

☐ 1. a. The defendant induced others to participate in the commission of the offense.

☐ b. The defendant occupied a position of leadership or dominance of other participants in the commission of the offense.

☐ 2. a. The offense was committed for the purpose of avoiding or preventing a lawful arrest.

☐ b. The offense was committed for the purpose of effecting an escape from custody.

☐ 3. a. The defendant was hired to commit the offense.

☐ b. The defendant was paid to commit the offense.

☐ 4. a. The offense was committed to disrupt the lawful exercise of a governmental function or the enforcement of laws.

☐ b. The offense was committed to hinder the lawful exercise of a governmental function or the enforcement of laws.

☐ 5. The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duties. **(NOTE:** *Strike words that are not applicable.)*

☐ 6. The offense was especially heinous, atrocious or cruel.

☐ 7. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

☐ 8. The defendant held public office at the time of the offense and the offense related to the conduct of the office.

☐ 9. a. The defendant was armed with a deadly weapon at the time of the crime.

☐ b. The defendant used a deadly weapon at the time of the crime.

☐ 10. a. The victim was very young.

☐ b. The victim was very old.

☐ c. The victim was mentally infirm.

☐ d. The victim was physically infirm.

☐ 11. The defendant committed the offense while on pretrial release on another felony charge.

☐ 12. The defendant involved a person under the age of 16 in the commission of the crime.

☐ 13. a. The offense involved an attempted taking of property of great monetary value.

☐ b. The offense involved the actual taking of property of great monetary value.

☐ c. The offense involved damage causing great monetary loss.

☐ d. The offense involved an unusually large quantity of contraband.

☐ 14. The defendant took advantage of a position of trust or confidence to commit the offense.

☒ 15. The defendant has a prior conviction or convictions for criminal offenses punishable by more than 60 days confinement.

☐ 16. Additional written findings of factors in aggravation:

☐ The Court makes no findings of any aggravating factors.

Material opposite unmarked squares is to be disregarded as surplusage.

MITIGATING FACTORS

- ☐ 1. The defendant has no record of criminal convictions.
- ☐ 2. The defendant has a record of criminal convictions consisting solely of misdemeanors punishable by not more than 60 days imprisonment.
- ☐ 3. The defendant committed the offense under duress which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 4. The defendant committed the offense under coercion which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 5. The defendant committed the offense under threat which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 6. The defendant committed the offense under compulsion which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 7. The defendant was a passive participant in the commission of the offense.
- ☐ 8. The defendant played a minor role in the commission of the offense.
- ☐ 9. The defendant was suffering from a mental condition that was insufficient to constitute a defense but significantly reduced his culpability for the offense.
- ☐ 10. The defendant was suffering from a physical condition that was insufficient to constitute a defense but significantly reduced his culpability for the offense.
- ☐ 11. The defendant's immaturity at the time of the commission of the offense significantly reduced his culpability for the offense
- ☐ 12. The defendant's limited mental capacity at the time of the commission of the offense significantly reduced his culpability for the offense.
- ☐ 13. The defendant has made substantial restitution to the victim.
- ☐ 14. The defendant has made full restitution to the victim.
- ☐ 15. The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct.
- ☐ 16. The victim was more than 16 years of age and consented to the defendant's conduct.
- ☐ 17. The defendant aided in the apprehension of another felon.
- ☐ 18. The defendant testified truthfully on behalf of the state in another prosecution of a felony.
- ☐ 19. The defendant acted under strong provocation.
- ☐ 20. The relationship between the defendant and the victim was an extenuating circumstance.
- ☐ 21. The defendant could not reasonably foresee that his conduct would cause or threaten serious bodily harm or fear.
- ☐ 22. The defendant exercised caution to avoid serious bodily harm or fear to other persons.
- ☐ 23. The defendant reasonably believed that his conduct was legal.
- ☐ 24. Prior to arrest, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
- ☐ 25. At an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
- ☐ 26. The defendant has been honorably discharged from the United States Armed Services.
- ☐ 27. The defendant has been a person of good character or has had a good reputation in the community in which he lives.
- ☐ 28. The defendant is a minor and has reliable supervision available.
- ☐ 29. Additional written findings of factors in mitigation:

☒ The Court makes no findings of any mitigating factors.

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- ☒ factors in aggravation outweigh the factors in mitigation.
- ☐ factors in mitigation outweigh the factors in aggravation.

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
2-21-91	Forrest A. Ferrell	F. Ferrell

AOC-CR-303, Side Two, Rev. 3/87 Material opposite unmarked squares is to be disregarded as surplusage.

— A-60 —

STATE OF NORTH CAROLINA

File No. 90 Crs 10800

Catawba County — Newton Seat Of Court

NOTE: *(This form is not to be used for multiple offenses unless they are consolidated for judgment.)*

In The General Court Of Justice ☐ District ☒ Superior Court Division

STATE VERSUS

Defendant: Earl James Watson

Race	Sex	DOB	Pre-FSA Felony
W	M	10-30-60	☐

JUDGMENT AND COMMITMENT

G.S. 15A-1301

Attorney For State: Jason Parker — ☐ Def. Found Not Indigent ☐ Def. Waived Attorney

Attorney For Defendant: Thomas Portwood — ☒ Appointed ☐ Retained

☐ DWI Offense — Level Of Punishment (G.S. 20-179):

Driver's License No. (DWI Only): — State (DWI Only):

The defendant ☒ pled guilty to: ☐ was found guilty by the Court of: ☐ was found guilty by a jury of: ☐ pled no contest to:

File No.(s) And Offense(s)	Date Of Offense	G.S. No.	Fel./M.	Class	Max. Term	Presumptive
90 Crs 10800 First Degree Rape	7-12-91	14-27.2 A2	Fel.	B	Life	N

The above offenses are consolidated for the purpose of judgment.
The Court having considered evidence, arguments of counsel and statement of the defendant Orders that the defendant be imprisoned

for a term of: Natural Life

in the custody of the ☒ N.C. Dept. of Correction ☐ Sheriff of _____ County

The defendant shall be given credit for 0 days spent in confinement prior to the date of this Judgment as a result of this charge.

☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

☒ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:
(NOTE: *List the Case Number, Date, County And Court In Which Prior Sentence Imposed.*)

90 Crs 10796, 19799, 2-21-91, Catawba County, Superior Criminal Court

(check all that apply)

☐ The defendant shall serve as a committed youthful offender pursuant to G.S. Chapter 148, Article 3B.

☐ The defendant should not obtain the benefit of release pursuant to G.S. 148-49.15.

☐ The defendant shall pay the costs.

☐ The defendant shall pay a fine of $ _____

☐ Immediate work release is recommended pursuant to G.S. 148-33.1. ☐ Work release is recommended. ☐ Work release is not recommended.

☐ With the consent of the defendant, work release is ordered under the conditions set forth in the attached order *(applies to misdemeanants only)*.

☐ The Court does not recommend that the defendant be required to pay restitution or reparation, as a condition of parole if parole is granted, or from his earnings if work release is granted.

☐ The Court recommends that the defendant be required to pay, as a condition of parole if parole is granted, or from his earnings if work release is granted, the items and amounts set out below.

Fine	Costs	Restitution	Reimbursement For Counsel Fee(s) And Other Expenses	Total Amount Due
$	$	$	$	$

Names and address(es) of aggrieved party (parties) to receive restitution *(specify amount if more than one aggrieved party)*

The Court further recommends:

FOR USE WITH FAIR SENTENCING ACT FELONIES ONLY

The Court has considered the aggravating and mitigating factors in G.S. 15A-1340.4(a) and

- ☐ makes no written findings because the prison term imposed does not require such findings.
- ☒ makes no written findings because the prison term imposed is pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
- ☐ makes written findings set forth on the attached Findings of Factors in Aggravation and Mitigation of Punishment (AOC-CR-303).

AWARD OF FEE TO COUNSEL FOR DEFENDANT

☐ A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT

It is ORDERED that the Clerk deliver three certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until he shall have complied with the conditions of release pending appeal.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*
2-21-91	Forrest A. Ferrell	Forrest A. Ferrell

APPEAL ENTRIES

☐ The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order shall remain in effect. ☐ except that:

☐ The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on Form AOC-CR-350.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*

ORDER OF COMMITMENT AFTER APPEAL

Date Remanded To District Court	*Date Appeal Dismissed*	*Date Withdrawal Of Appeal Filed*	*Date Appellate Opinion Certified*

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the Sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official three certified copies of this Judgment and this Order as authority for the commitment and detention of the defendant.

Date	*Signature Of Clerk*
	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

- ☐ Findings Of Factors In Aggravation And Mitigation Of Punishment (AOC-CR-303)
- ☐ Determination Of Sentencing Factors In DWI Cases (AOC-CR-311)
- ☐ Appeal Entries (AOC-CR-350)

Date	*Signature And Seal*
2-22-91	Carol Lemon
Date Certified Copies Delivered To Sheriff 2-22-91	☐ *Deputy CSC* ☑ *Assistant CSC* ☐ *Clerk Of Superior Court*

AOC-CR-301, Side Two
Rev. 3/87

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA

File No. 90 Crs 10796

Catawba County — Newton Seat Of Court

In The General Court Of Justice ☐ District ☒ Superior Court Division

NOTE: *(This form is not to be used for multiple offenses unless they are consolidated for judgment.)*

STATE VERSUS

Defendant: Earl James Watson

Race	Sex	DOB	Pre-FSA Felony
W	M	10-30-60	☐

JUDGMENT AND COMMITMENT

G.S. 15A-1301

Attorney For State: Jason Parker — ☐ Def. Found Not Indigent ☐ Def. Waived Attorney

Attorney For Defendant: Thomas Portwood — ☒ Appointed ☐ Retained

☐ DWI Offense — Level Of Punishment (G.S. 20-179)

Driver's License No. (DWI Only) — State (DWI Only)

The defendant ☒ pled guilty to: ☐ was found guilty by the Court of: ☐ was found guilty by a jury of: ☐ pled no contest to:

File No.(s) And Offense(s)	Date Of Offense	G.S. No.	Fel./M.	Class	Max. Term	Presumptive
90 Crs 10796						
Count I First Degree Kidnapping	7-12-90	14-39A & B	Fel.	D	40 Yrs.	1 Yr.
Count II Sexual Offense, First Degree	7-12-90	14-27.4 A2	Fel.	B	Life	N
Count III Sexual Offense, First Degree	7-12-90	14-27.4 A2	Fel.	B	Life	N

The above offenses are consolidated for the purpose of judgment.
The Court having considered evidence, arguments of counsel and statement of the defendant Orders that the defendant be imprisoned

for a term of: Natural Life

in the custody of the ☒ N.C. Dept. of Correction ☐ Sheriff of _____ County

The defendant shall be given credit for 63 days spent in confinement prior to the date of this Judgment as a result of this charge.

☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

☐ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:
(NOTE: *List the Case Number, Date, County And Court In Which Prior Sentence Imposed.*)

(check all that apply)

☐ The defendant shall serve as a committed youthful offender pursuant to G.S. Chapter 148, Article 3B.

☐ The defendant should not obtain the benefit of release pursuant to G.S. 148-49.15.

☐ The defendant shall pay the costs.

☐ The defendant shall pay a fine of $ _____

☐ Immediate work release is recommended pursuant to G.S. 148-33.1. ☐ Work release is recommended. ☐ Work release is not recommended.

☐ With the consent of the defendant, work release is ordered under the conditions set forth in the attached order *(applies to misdemeanants only)*.

☐ The Court does not recommend that the defendant be required to pay restitution or reparation, as a condition of parole if parole is granted, or from his earnings if work release is granted.

☐ The Court recommends that the defendant be required to pay, as a condition of parole if parole is granted, or from his earnings if work release is granted, the items and amounts set out below.

Fine	Costs	Restitution	Reimbursement For Counsel Fee(s) And Other Expenses	Total Amount Due
$	$	$	$	$

Names and address(es) of aggrieved party (parties) to receive restitution *(specify amount if more than one aggrieved party)*

 Material opposite unmarked squares is to be disregarded as surplusage.

The Court further recommends:

FOR USE WITH FAIR SENTENCING ACT FELONIES ONLY

The Court has considered the aggravating and mitigating factors in G.S. 15A-1340.4(a) and

☐ makes no written findings because the prison term imposed does not require such findings.

☐ makes no written findings because the prison term imposed is pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.

☒ xx makes written findings set forth on the attached Findings of Factors in Aggravation and Mitigation of Punishment (AOC-CR-303).

AWARD OF FEE TO COUNSEL FOR DEFENDANT

☐ A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT

It is ORDERED that the Clerk deliver three certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until he shall have complied with the conditions of release pending appeal.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*
2-21-91	Forrest A. Ferrell	Forrest A. Ferrell

APPEAL ENTRIES

☐ The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order shall remain in effect. ☐ except that:

☐ The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on Form AOC-CR-350.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*

ORDER OF COMMITMENT AFTER APPEAL

Date Remanded To District Court	*Date Appeal Dismissed*	*Date Withdrawal Of Appeal Filed*	*Date Appellate Opinion Certified*

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the Sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official three certified copies of this Judgment and this Order as authority for the commitment and detention of the defendant.

Date	*Signature Of Clerk*
	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

☐ Findings Of Factors In Aggravation And Mitigation Of Punishment (AOC-CR-303)
☐ Determination Of Sentencing Factors In DWI Cases (AOC-CR-311)
☐ Appeal Entries (AOC-CR-350)

Date	*Signature And Seal*
2-22-91	Cindi A. Sirena
Date Certified Copies Delivered To Sheriff 2-22-91	☐ *Deputy CSC* ☑ *Assistant CSC* ☐ *Clerk Of Superior Court*

AOC-CR-301, Side Two
Rev. 3/87

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA

Catawba County

File No. 90CRS10796

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Defendant

Earl James Watson

FELONY JUDGMENT
FINDINGS OF FACTORS IN AGGRAVATION AND MITIGATION OF PUNISHMENT

G.S. 15A-1340-4(a)

NOTE: *Separate findings of aggravating factors and mitigating factors should be made for each offense. Only one factor should be found under each numbered item for which there are alternatives listed.*

AGGRAVATING FACTORS

☐ 1. a. The defendant induced others to participate in the commission of the offense.

☐ b. The defendant occupied a position of leadership or dominance of other participants in the commission of the offense.

☐ 2. a. The offense was committed for the purpose of avoiding or preventing a lawful arrest.

☐ b. The offense was committed for the purpose of effecting an escape from custody.

☐ 3. a. The defendant was hired to commit the offense.

☐ b. The defendant was paid to commit the offense.

☐ 4. a. The offense was committed to disrupt the lawful exercise of a governmental function or the enforcement of laws.

☐ b. The offense was committed to hinder the lawful exercise of a governmental function or the enforcement of laws.

☐ 5. The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duties. (NOTE: *Strike words that are not applicable.*)

☐ 6. The offense was especially heinous, atrocious or cruel.

☐ 7. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

☐ 8. The defendant held public office at the time of the offense and the offense related to the conduct of the office.

☐ 9. a. The defendant was armed with a deadly weapon at the time of the crime.

☐ b. The defendant used a deadly weapon at the time of the crime.

☐ 10. a. The victim was very young.

☐ b. The victim was very old.

☐ c. The victim was mentally infirm.

☐ d. The victim was physically infirm.

☐ 11. The defendant committed the offense while on pretrial release on another felony charge.

☐ 12. The defendant involved a person under the age of 16 in the commission of the crime.

☐ 13. a. The offense involved an attempted taking of property of great monetary value.

☐ b. The offense involved the actual taking of property of great monetary value.

☐ c. The offense involved damage causing great monetary loss.

☐ d. The offense involved an unusually large quantity of contraband.

☐ 14. The defendant took advantage of a position of trust or confidence to commit the offense.

☒ 15. The defendant has a prior conviction or convictions for criminal offenses punishable by more than 60 days confinement.

☐ 16. Additional written findings of factors in aggravation:

☐ The Court makes no findings of any aggravating factors.

Material opposite unmarked squares is to be

MITIGATING FACTORS

- ☐ 1. The defendant has no record of criminal convictions.
- ☐ 2. The defendant has a record of criminal convictions consisting solely of misdemeanors punishable by not more than 60 days imprisonment.
- ☐ 3. The defendant committed the offense under duress which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 4. The defendant committed the offense under coercion which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 5. The defendant committed the offense under threat which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 6. The defendant committed the offense under compulsion which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 7. The defendant was a passive participant in the commission of the offense.
- ☐ 8. The defendant played a minor role in the commission of the offense.
- ☐ 9. The defendant was suffering from a mental condition that was insufficient to constitute a defense but significantly reduced his culpability for the offense.
- ☐ 10. The defendant was suffering from a physical condition that was insufficient to constitute a defense but significantly reduced his culpability for the offense.
- ☐ 11. The defendant's immaturity at the time of the commission of the offense significantly reduced his culpability for the offense
- ☐ 12. The defendant's limited mental capacity at the time of the commission of the offense significantly reduced his culpability for the offense.
- ☐ 13. The defendant has made substantial restitution to the victim.
- ☐ 14. The defendant has made full restitution to the victim.
- ☐ 15. The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct.
- ☐ 16. The victim was more than 16 years of age and consented to the defendant's conduct.
- ☐ 17. The defendant aided in the apprehension of another felon.
- ☐ 18. The defendant testified truthfully on behalf of the state in another prosecution of a felony.
- ☐ 19. The defendant acted under strong provocation.
- ☐ 20. The relationship between the defendant and the victim was an extenuating circumstance.
- ☐ 21. The defendant could not reasonably foresee that his conduct would cause or threaten serious bodily harm or fear.
- ☐ 22. The defendant exercised caution to avoid serious bodily harm or fear to other persons.
- ☐ 23. The defendant reasonably believed that his conduct was legal.
- ☐ 24. Prior to arrest, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
- ☐ 25. At an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
- ☐ 26. The defendant has been honorably discharged from the United States Armed Services.
- ☐ 27. The defendant has been a person of good character or has had a good reputation in the community in which he lives.
- ☐ 28. The defendant is a minor and has reliable supervision available.
- ☐ 29. Additional written findings of factors in mitigation:

☒ The Court makes no findings of any mitigating factors.

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

☒ factors in aggravation outweigh the factors in mitigation.

☐ factors in mitigation outweigh the factors in aggravation.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*
2-21-91	Forrest A. Ferrell	F. Ferrell

AOC-CR-303, Side Two, Rev. 3/87 Material opposite unmarked squares is to be regarded as surplusage.

Rev. 3/87

STATE OF NORTH CAROLINA

File No. 90CRS 10796

Cat. County Newton Seat Of Court

In The General Court Of Justice ☐ District ☑ Superior Court Division

NOTE: *(This form is not to be used for multiple offenses unless they are consolidated for judgment.)*

STATE VERSUS

Defendant: Earl James Watson

JUDGMENT AND COMMITMENT

G.S. 15A-1301

Race	Sex	DOB	Pre-FSA Felony
W	M	10-30-60	☐

Attorney For State: J. Parker

☐ Def. Found Not Indigent ☐ Def. Waived Attorney

Attorney For Defendant: Returned ☑ Appointed ☐ Retained

☐ DWI Offense

Level Of Punishment (G.S. 20-179):

Driver's License No. (DWI Only):

State (DWI Only):

The defendant ☑ pled guilty to: ☐ was found guilty by the Court of: ☐ was found guilty by a jury of: ☐ pled no contest to:

File No.(s) And Offense(s)	Date Of Offense	G.S. No.	Fel./M.	Class	Max. Term	Presumptive
90CRS10796						
Count I First Degree Kidnapping	7-12-90	14-39A+B	Fel	D	40yrs	141.
Count II Sexual offense, 1st Degree	7-12-90	14-27.4A2	Fel	B	Life	N
Count III Sexual offense, 1st Degree	7-12-90	14-27.4A2	Fel	B	Life	N

The above offenses are consolidated for the purpose of judgment.

The Court having considered evidence, arguments of counsel and statement of the defendant Orders that the defendant be imprisoned

for a term of: Natural Life

in the custody of the: ☑ N.C. Dept. of Correction ☐ Sheriff of _____ County

The defendant shall be given credit for 63 days spent in confinement prior to the date of this Judgment as a result of this charge.

☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

☐ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

(NOTE: *List the Case Number, Date, County And Court In Which Prior Sentence Imposed.*)

(check all that apply)

☐ The defendant shall serve as a committed youthful offender pursuant to G.S. Chapter 148, Article 3B.

☐ The defendant should not obtain the benefit of release pursuant to G.S. 148-49.15.

☐ The defendant shall pay the costs.

☐ The defendant shall pay a fine of $ _____

☐ Immediate work release is recommended pursuant to G.S. 148-33.1. ☐ Work release is recommended. ☐ Work release is not recommended.

☐ With the consent of the defendant, work release is ordered under the conditions set forth in the attached order *(applies to misdemeanants only).*

☐ The Court does not recommend that the defendant be required to pay restitution or reparation, as a condition of parole if parole is granted, or from his earnings if work release is granted.

☐ The Court recommends that the defendant be required to pay, as a condition of parole if parole is granted, or from his earnings if work release is granted, the items and amounts set out below.

Fine	Costs	Restitution	Reimbursement For Counsel Fee(s) And Other Expenses	Total Amount Due
$	$	$	$	$

Names and address(es) of aggrieved party (parties) to receive restitution *(specify amount if more than one aggrieved party)*

The Court further recommends:

FOR USE WITH FAIR SENTENCING ACT FELONIES ONLY

The Court has considered the aggravating and mitigating factors in G.S. 15A-1340.4(a) and

☐ makes no written findings because the prison term imposed does not require such findings.

☐ makes no written findings because the prison term imposed is pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.

☐ makes written findings set forth on the attached Findings of Factors in Aggravation and Mitigation of Punishment (AOC-CR-303).

AWARD OF FEE TO COUNSEL FOR DEFENDANT

☐ A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT

It is ORDERED that the Clerk deliver three certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until he shall have complied with the conditions of release pending appeal.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*
2-21-91	Forrest A. Ferrell	

APPEAL ENTRIES

☐ The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order shall remain in effect. ☐ except that:

☐ The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on Form AOC-CR-350.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*

ORDER OF COMMITMENT AFTER APPEAL

Date Remanded To District Court	*Date Appeal Dismissed*	*Date Withdrawal Of Appeal Filed*	*Date Appellate Opinion Certified*

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the Sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official three certified copies of this Judgment and this Order as authority for the commitment and detention of the defendant.

Date	*Signature Of Clerk*
	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

☐ Findings Of Factors In Aggravation And Mitigation Of Punishment (AOC-CR-303)
☐ Determination Of Sentencing Factors In DWI Cases (AOC-CR-311)
☐ Appeal Entries (AOC-CR-350)

Date	*Signature And Seal*
Date Certified Copies Delivered To Sheriff	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

AOC-CR-301, Side Two
Rev. 3/87

Material opposite unmarked squares is to be disregarded as surplusage.

EXHIBIT

STATE OF NORTH CAROLINA

File No. 90CRS 10800

Catawba County — Newton Seat Of Court

In The General Court Of Justice ☐ District ☒ Superior Court Division

NOTE: *(This form is not to be used for multiple offenses unless they are consolidated for judgment.)*

STATE VERSUS

Defendant: Earl James Watson

Race	Sex	DOB	Pre-FSA Felony
White	Male	10/30/60	☐

CORRECTED JUDGMENT & COMMITMENT (EX MERO MOTU)

JUDGMENT AND COMMITMENT

G.S. 15A-1301

Attorney For State	Def. Found Not Indigent	Def. Waived Attorney	Attorney For Defendant	Appointed	Retained
Jason Parker	☐	☐	Thomas Portwood	☒	☐

DWI Offense	Level Of Punishment (G.S. 20-179)	Driver's License No. (DWI Only)	State (DWI Only)
☐			

The defendant ☒ pled guilty to: ☐ was found guilty by the Court of: ☐ was found guilty by a jury of: ☐ pled no contest to:

File No.(s) And Offense(s)	Date Of Offense	G.S. No.	Fel./M.	Class	Max. Term	Presumptive
90CRS 10800 First Degree Rape	7/12/91	14-27.2A2	F	B	Life	

The above offenses are consolidated for the purpose of judgment.
The Court having considered evidence, arguments of counsel and statement of the defendant Orders that the defendant be imprisoned

for a term of: Natural Life

in the custody of the ☒ N.C. Dept. of Correction ☐ Sheriff of _____ County

The defendant shall be given credit for _____ days spent in confinement prior to the date of this Judgment as a result of this charge.

☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

☒ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:
(NOTE: *List the Case Number, Date, County And Court In Which Prior Sentence Imposed.*)

90CRS 10796 & 10799, 2/21/91, Catawba County Superior Criminal

(check all that apply)

☐ The defendant shall serve as a committed youthful offender pursuant to G.S. Chapter 148, Article 3B.

☐ The defendant should not obtain the benefit of release pursuant to G.S. 148-49.15.

☐ The defendant shall pay the costs.

☐ The defendant shall pay a fine of $ _____

☐ Immediate work release is recommended pursuant to G.S. 148-33.1. ☐ Work release is recommended. ☐ Work release is not recommended.

☐ With the consent of the defendant, work release is ordered under the conditions set forth in the attached order *(applies to misdemeanants only)*.

☐ The Court does not recommend that the defendant be required to pay restitution or reparation, as a condition of parole if parole is granted, or from his earnings if work release is granted.

☐ The Court recommends that the defendant be required to pay, as a condition of parole if parole is granted, or from his earnings if work release is granted, the items and amounts set out below.

Fine	Costs	Restitution	Reimbursement For Counsel Fee(s) And Other Expenses	Total Amount Due
$	$	$	$	$

Names and address(es) of aggrieved party (parties) to receive restitution *(specify amount if more than one aggrieved party)*

The Court further recommends:

FOR USE WITH FAIR SENTENCING ACT FELONIES ONLY

The Court has considered the aggravating and mitigating factors in G.S. 15A-1340.4(a) and

☐ makes no written findings because the prison term imposed does not require such findings.

☐ makes no written findings because the prison term imposed is pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.

☒ makes written findings set forth on the attached Findings of Factors in Aggravation and Mitigation of Punishment (AOC-CR-303).

AWARD OF FEE TO COUNSEL FOR DEFENDANT

☐ A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT

It is ORDERED that the Clerk deliver three certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until he shall have complied with the conditions of release pending appeal.

2/21/91 Original Judgment Date

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*
12-16-91	Honorable Forrest A. Ferrell	Forrest A. Ferrell

APPEAL ENTRIES

☐ The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order shall remain in effect. ☐ except that:

☐ The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on Form AOC-CR-350.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*

ORDER OF COMMITMENT AFTER APPEAL

Date Remanded To District Court	*Date Appeal Dismissed*	*Date Withdrawal Of Appeal Filed*	*Date Appellate Opinion Certified*

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the Sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official three certified copies of this Judgment and this Order as authority for the commitment and detention of the defendant.

Date	*Signature Of Clerk*
	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

☒ Findings Of Factors In Aggravation And Mitigation Of Punishment (AOC-CR-303)
☐ Determination Of Sentencing Factors In DWI Cases (AOC-CR-311)
☐ Appeal Entries (AOC-CR-350)

Date	*Signature And Seal*
12-19-91	
Date Certified Copies Delivered To Sheriff 12-19-91	☒ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

AOC-CR-301, Side Two
Rev. 3/87

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA

Catawba County

CORRECTED FACTORS
(EX MERO MOTU)

File No.
90CRS 10800

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Defendant

Earl James Watson

FELONY JUDGMENT
FINDINGS OF FACTORS IN AGGRAVATION AND MITIGATION OF PUNISHMENT

G.S. 15A-1340-4(a)

NOTE: *Separate findings of aggravating factors and mitigating factors should be made for each offense. Only one factor should be found under each numbered item for which there are alternatives listed.*

AGGRAVATING FACTORS

☐ 1. a. The defendant induced others to participate in the commission of the offense.

☐ b. The defendant occupied a position of leadership or dominance of other participants in the commission of the offense.

☐ 2. a. The offense was committed for the purpose of avoiding or preventing a lawful arrest.

☐ b. The offense was committed for the purpose of effecting an escape from custody.

☐ 3. a. The defendant was hired to commit the offense.

☐ b. The defendant was paid to commit the offense.

☐ 4. a. The offense was committed to disrupt the lawful exercise of a governmental function or the enforcement of laws.

☐ b. The offense was committed to hinder the lawful exercise of a governmental function or the enforcement of laws.

☐ 5. The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duties. (NOTE: *Strike words that are not applicable.)*

☐ 6. The offense was especially heinous, atrocious or cruel.

☐ 7. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

☐ 8. The defendant held public office at the time of the offense and the offense related to the conduct of the office.

☐ 9. a. The defendant was armed with a deadly weapon at the time of the crime.

☐ b. The defendant used a deadly weapon at the time of the crime.

☐ 10. a. The victim was very young.

☐ b. The victim was very old.

☐ c. The victim was mentally infirm.

☐ d. The victim was physically infirm.

☐ 11. The defendant committed the offense while on pretrial release on another felony charge.

☐ 12. The defendant involved a person under the age of 16 in the commission of the crime.

☐ 13. a. The offense involved an attempted taking of property of great monetary value.

☐ b. The offense involved the actual taking of property of great monetary value.

☐ c. The offense involved damage causing great monetary loss.

☐ d. The offense involved an unusually large quantity of contraband.

☐ 14. The defendant took advantage of a position of trust or confidence to commit the offense.

☒ 15. The defendant has a prior conviction or convictions for criminal offenses punishable by more than 60 days confinement.

☐ 16. Additional written findings of factors in aggravation:

☐ The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

- ☐ 1. The defendant has no record of criminal convictions.
- ☐ 2. The defendant has a record of criminal convictions consisting solely of misdemeanors punishable by not more than 60 days imprisonment.
- ☐ 3. The defendant committed the offense under duress which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 4. The defendant committed the offense under coercion which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 5. The defendant committed the offense under threat which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 6. The defendant committed the offense under compulsion which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 7. The defendant was a passive participant in the commission of the offense.
- ☐ 8. The defendant played a minor role in the commission of the offense.
- ☐ 9. The defendant was suffering from a mental condition that was insufficient to constitute a defense but significantly reduced his culpability for the offense.
- ☐ 10. The defendant was suffering from a physical condition that was insufficient to constitute a defense but significantly reduced his culpability for the offense.
- ☐ 11. The defendant's immaturity at the time of the commission of the offense significantly reduced his culpability for the offense
- ☐ 12. The defendant's limited mental capacity at the time of the commission of the offense significantly reduced his culpability for the offense.
- ☐ 13. The defendant has made substantial restitution to the victim.
- ☐ 14. The defendant has made full restitution to the victim.
- ☐ 15. The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct.
- ☐ 16. The victim was more than 16 years of age and consented to the defendant's conduct.
- ☐ 17. The defendant aided in the apprehension of another felon.
- ☐ 18. The defendant testified truthfully on behalf of the state in another prosecution of a felony.
- ☐ 19. The defendant acted under strong provocation.
- ☐ 20. The relationship between the defendant and the victim was an extenuating circumstance.
- ☐ 21. The defendant could not reasonably foresee that his conduct would cause or threaten serious bodily harm or fear.
- ☐ 22. The defendant exercised caution to avoid serious bodily harm or fear to other persons.
- ☐ 23. The defendant reasonably believed that his conduct was legal.
- ☐ 24. Prior to arrest, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
- ☐ 25. At an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
- ☐ 26. The defendant has been honorably discharged from the United States Armed Services.
- ☐ 27. The defendant has been a person of good character or has had a good reputation in the community in which he lives.
- ☐ 28. The defendant is a minor and has reliable supervision available.
- ☐ 29. Additional written findings of factors in mitigation:

☒ The Court makes no findings of any mitigating factors.

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

☒ factors in aggravation outweigh the factors in mitigation.

☐ factors in mitigation outweigh the factors in aggravation.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*
12-16-91	Honorable Forrest A. Ferrell	

AOC-CR-303, Side Two, Rev. 3/87 Material opposite unmarked squares is to be disregarded as surplusage.

2/21/91 Original Judgment Date

☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

☐ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:
(NOTE: *List the Case Number, Date, County And Court In Which Prior Sentence Imposed.)*

(check all that apply)

☐ The defendant shall serve as a committed youthful offender pursuant to G.S. Chapter 148, Article 3B.

☐ The defendant should not obtain the benefit of release pursuant to G.S. 148-49.15.

☐ The defendant shall pay the costs.

☐ The defendant shall pay a fine of $ _____

☐ Immediate work release is recommended pursuant to G.S. 148-33.1.

☐ Work release is recommended.

☐ Work release is not recommended.

☐ With the consent of the defendant, work release is ordered under the conditions set forth in the attached order *(applies to misdemeanants only)*.

☐ The Court does not recommend that the defendant be required to pay restitution or reparation, as a condition of parole if parole is granted, or from his earnings if work release is granted.

☐ The Court recommends that the defendant be required to pay, as a condition of parole if parole is granted, or from his earnings if work release is granted, the items and amounts set out below.

Fine	Costs	Restitution	Reimbursement For Counsel Fee(s) And Other Expenses	Total Amount Due
$	$	$	$	$

Names and address(es) of aggrieved party (parties) to receive restitution *(specify amount if more than one aggrieved party)*

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA

Catawba County — Newton Seat Of Court

File No. 90CRS 10796 Count 2 & 3

NOTE: *(This form is not to be used for multiple offenses unless they are consolidated for judgment.)*

In The General Court Of Justice ☐ District ☒ Superior Court Division

STATE VERSUS

Defendant: Earl James Watson

Race	Sex	DOB	Pre-FSA Felony
White	Male	10/30/60	☐

CORRECTED JUDGMENT & COMMITMENT (EX MERO MOTU)

JUDGMENT AND COMMITMENT

G.S. 15A-1301

Attorney For State: Jason Parker — ☐ Def. Found Not Indigent ☐ Def. Waived Attorney

Attorney For Defendant: Thomas Portwood — ☒ Appointed ☐ Retained

☐ DWI Offense — Level Of Punishment (G.S. 20-179)

Driver's License No. (DWI Only) — State (DWI Only)

The defendant ☒ pled guilty to: ☐ was found guilty by the Court of: ☐ was found guilty by a jury of: ☐ pled no contest to:

File No.(s) And Offense(s)	Date Of Offense	G.S. No.	Fel./M.	Class	Max. Term	Presumptive
90CRS 10796 Count II First Degree Sexual Offense	7/12/90	14-27.4A2	F	B	Life	
90CRS 10796 Count III First Degree Sexual Offense	7/12/90	14-27.4A2	F	B	Life	

The above offenses are consolidated for the purpose of judgment.
The Court having considered evidence, arguments of counsel and statement of the defendant Orders that the defendant be imprisoned

for a term of: Natural Life

in the custody of the ☒ N.C. Dept. of Correction ☐ Sheriff of _____ County

The defendant shall be given credit for _____ days spent in confinement prior to the date of this Judgment as a result of this charge.

☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is now serving

The Court further recommends:

FOR USE WITH FAIR SENTENCING ACT FELONIES ONLY

The Court has considered the aggravating and mitigating factors in G.S. 15A-1340.4(a) and

☐ makes no written findings because the prison term imposed does not require such findings.

☐ makes no written findings because the prison term imposed is pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.

☒ makes written findings set forth on the attached Findings of Factors in Aggravation and Mitigation of Punishment (AOC-CR-303).

AWARD OF FEE TO COUNSEL FOR DEFENDANT

☐ A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT

It is ORDERED that the Clerk deliver three certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until he shall have complied with the conditions of release pending appeal.

2/21/91 Original Judgment Date

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*
12-16-91	Honorable Forrest A. Ferrell	Forrest A. Ferrell

APPEAL ENTRIES

☐ The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order shall remain in effect. ☐ except that:

☐ The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on Form AOC-CR-350.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*

ORDER OF COMMITMENT AFTER APPEAL

Date Remanded To District Court	*Date Appeal Dismissed*	*Date Withdrawal Of Appeal Filed*	*Date Appellate Opinion Certified*

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the Sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official three certified copies of this Judgment and this Order as authority for the commitment and detention of the defendant.

Date	*Signature Of Clerk*
	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

☒ Findings Of Factors In Aggravation And Mitigation Of Punishment (AOC-CR-303)
☐ Determination Of Sentencing Factors In DWI Cases (AOC-CR-311)
☐ Appeal Entries (AOC-CR-350)

Date	*Signature And Seal*
12-16-91	Clerk
Date Certified Copies Delivered To Sheriff	☒ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*
12-16-91	

AOC-CR-301, Side Two
Rev. 3/87

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA

File No. 90CRS 10796 Count 1

Catawba County — Newton Seat Of Court

In The General Court Of Justice ☐ District ☒ Superior Court Division

NOTE: *(This form is not to be used for multiple offenses unless they are consolidated for judgment.)*

STATE VERSUS

CORRECTED JUDGMENT & COMMITMENT (EX MERO MOTU)

JUDGMENT AND COMMITMENT

G.S. 15A-1301

Defendant	Race	Sex	DOB	Pre-FSA Felony
Earl James Watson	White	Male	10/30/60	☐

Attorney For State	Def. Found Not Indigent	Def. Waived Attorney	Attorney For Defendant	Appointed	Retained
Jason Parker	☐	☐	Thomas Portwood	☒	☐

DWI Offense	Level Of Punishment (G.S. 20-179)	Driver's License No. (DWI Only)	State (DWI Only)
☐			

The defendant ☒ pled guilty to: ☐ was found guilty by the Court of: ☐ was found guilty by a jury of: ☐ pled no contest to:

File No.(s) And Offense(s)	Date Of Offense	G.S. No.	Fel./M.	Class	Max. Term	Presumptive
Count 1 90CRS 10796 First Degree Kidnapping	7/12/90	14-39 A&B	F	D	40	12

The above offenses are consolidated for the purpose of judgment.
The Court having considered evidence, arguments of counsel and statement of the defendant Orders that the defendant be imprisoned

for a term of (40) Forty Years

in the custody of the ☒ N.C. Dept. of Correction ☐ Sheriff of _____ County

The defendant shall be given credit for -63- days spent in confinement prior to the date of this Judgment as a result of this charge.

☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

☐ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:
(NOTE: *List the Case Number, Date, County And Court In Which Prior Sentence Imposed.)*

(check all that apply)

☐ The defendant shall serve as a committed youthful offender pursuant to G.S. Chapter 148, Article 3B.

☐ The defendant should not obtain the benefit of release pursuant to G.S. 148-49.15.

☐ The defendant shall pay the costs.

☐ The defendant shall pay a fine of $ _____

☐ Immediate work release is recommended pursuant to G.S. 148-33.1. ☐ Work release is recommended. ☐ Work release is not recommended.

☐ With the consent of the defendant, work release is ordered under the conditions set forth in the attached order *(applies to misdemeanants only)*.

☐ The Court does not recommend that the defendant be required to pay restitution or reparation, as a condition of parole if parole is granted, or from his earnings if work release is granted.

☐ The Court recommends that the defendant be required to pay, as a condition of parole if parole is granted, or from his earnings if work release is granted, the items and amounts set out below.

Fine	Costs	Restitution	Reimbursement For Counsel Fee(s) And Other Expenses	Total Amount Due
$	$	$	$	$

Names and address(es) of aggrieved party (parties) to receive restitution *(specify amount if more than one aggrieved party)*

Material opposite unmarked squares is to be disregarded as surplusage.

The Court further recommends:

FOR USE WITH FAIR SENTENCING ACT FELONIES ONLY

The Court has considered the aggravating and mitigating factors in G.S. 15A-1340.4(a) and

☐ makes no written findings because the prison term imposed does not require such findings.

☐ makes no written findings because the prison term imposed is pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.

☒ makes written findings set forth on the attached Findings of Factors in Aggravation and Mitigation of Punishment (AOC-CR-303).

AWARD OF FEE TO COUNSEL FOR DEFENDANT

☐ A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT

It is ORDERED that the Clerk deliver three certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until he shall have complied with the conditions of release pending appeal.

2/21/91 Original Judgment Date

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*
12-16-91	Honorable Forrest A. Ferrell	

APPEAL ENTRIES

☐ The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order shall remain in effect. ☐ except that: .

☐ The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on Form AOC-CR-350.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*

ORDER OF COMMITMENT AFTER APPEAL

Date Remanded To District Court	*Date Appeal Dismissed*	*Date Withdrawal Of Appeal Filed*	*Date Appellate Opinion Certified*

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the Sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official three certified copies of this Judgment and this Order as authority for the commitment and detention of the defendant.

Date	*Signature Of Clerk*
	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

☒ Findings Of Factors In Aggravation And Mitigation Of Punishment (AOC-CR-303)
☐ Determination Of Sentencing Factors In DWI Cases (AOC-CR-311)
☐ Appeal Entries (AOC-CR-350)

Date	*Signature And Seal*
12-17-91	
Date Certified Copies Delivered To Sheriff	☒ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*
12-17-91	

AOC-CR-301, Side Two
Rev. 3/87

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA

CORRECTED FACTORS
(EX MERO MOTU)

File No.
90CRS 10796

Catawba County

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Defendant

Earl James Watson

FELONY JUDGMENT
FINDINGS OF FACTORS IN AGGRAVATION AND MITIGATION OF PUNISHMENT

G.S. 15A-1340-4(a)

NOTE: *Separate findings of aggravating factors and mitigating factors should be made for each offense. Only one factor should be found under each numbered item for which there are alternatives listed.*

AGGRAVATING FACTORS

☐ 1. a. The defendant induced others to participate in the commission of the offense.

☐ b. The defendant occupied a position of leadership or dominance of other participants in the commission of the offense.

☐ 2. a. The offense was committed for the purpose of avoiding or preventing a lawful arrest.

☐ b. The offense was committed for the purpose of effecting an escape from custody.

☐ 3. a. The defendant was hired to commit the offense.

☐ b. The defendant was paid to commit the offense.

☐ 4. a. The offense was committed to disrupt the lawful exercise of a governmental function or the enforcement of laws.

☐ b. The offense was committed to hinder the lawful exercise of a governmental function or the enforcement of laws.

☐ 5. The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duties. (**NOTE:** *Strike words that are not applicable.)*

☐ 6. The offense was especially heinous, atrocious or cruel.

☐ 7. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

☐ 8. The defendant held public office at the time of the offense and the offense related to the conduct of the office.

☐ 9. a. The defendant was armed with a deadly weapon at the time of the crime.

☐ b. The defendant used a deadly weapon at the time of the crime.

☐ 10. a. The victim was very young.

☐ b. The victim was very old.

☐ c. The victim was mentally infirm.

☐ d. The victim was physically infirm.

☐ 11. The defendant committed the offense while on pretrial release on another felony charge.

☐ 12. The defendant involved a person under the age of 16 in the commission of the crime.

☐ 13. a. The offense involved an attempted taking of property of great monetary value.

☐ b. The offense involved the actual taking of property of great monetary value.

☐ c. The offense involved damage causing great monetary loss.

☐ d. The offense involved an unusually large quantity of contraband.

☐ 14. The defendant took advantage of a position of trust or confidence to commit the offense.

☐ 15. The defendant has a prior conviction or convictions for criminal offenses punishable by more than 60 days confinement.

☒ 16. Additional written findings of factors in aggravation:
Defendant did not release the victim in a place of safety after she had been sexualy assaulted.

☐ The Court makes no findings of any aggravating factors.

— A-76 —

MITIGATING FACTORS

- ☐ 1. The defendant has no record of criminal convictions.
- ☐ 2. The defendant has a record of criminal convictions consisting solely of misdemeanors punishable by not more than 60 days imprisonment.
- ☐ 3. The defendant committed the offense under duress which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 4. The defendant committed the offense under coercion which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 5. The defendant committed the offense under threat which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 6. The defendant committed the offense under compulsion which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 7. The defendant was a passive participant in the commission of the offense.
- ☐ 8. The defendant played a minor role in the commission of the offense.
- ☐ 9. The defendant was suffering from a mental condition that was insufficient to constitute a defense but significantly reduced his culpability for the offense.
- ☐ 10. The defendant was suffering from a physical condition that was insufficient to constitute a defense but significantly reduced his culpability for the offense.
- ☐ 11. The defendant's immaturity at the time of the commission of the offense significantly reduced his culpability for the offense
- ☐ 12. The defendant's limited mental capacity at the time of the commission of the offense significantly reduced his culpability for the offense.
- ☐ 13. The defendant has made substantial restitution to the victim.
- ☐ 14. The defendant has made full restitution to the victim.
- ☐ 15. The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct.
- ☐ 16. The victim was more than 16 years of age and consented to the defendant's conduct.
- ☐ 17. The defendant aided in the apprehension of another felon.
- ☐ 18. The defendant testified truthfully on behalf of the state in another prosecution of a felony.
- ☐ 19. The defendant acted under strong provocation.
- ☐ 20. The relationship between the defendant and the victim was an extenuating circumstance.
- ☐ 21. The defendant could not reasonably foresee that his conduct would cause or threaten serious bodily harm or fear.
- ☐ 22. The defendant exercised caution to avoid serious bodily harm or fear to other persons.
- ☐ 23. The defendant reasonably believed that his conduct was legal.
- ☐ 24. Prior to arrest, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
- ☐ 25. At an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
- ☐ 26. The defendant has been honorably discharged from the United States Armed Services.
- ☐ 27. The defendant has been a person of good character or has had a good reputation in the community in which he lives.
- ☐ 28. The defendant is a minor and has reliable supervision available.
- ☐ 29. Additional written findings of factors in mitigation:

☒ The Court makes no findings of any mitigating factors.

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- ☒ factors in aggravation outweigh the factors in mitigation.
- ☐ factors in mitigation outweigh the factors in aggravation.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*
12-16-91	Honorable Forrest A. Ferrell	

AOC-CR-303, Side Two, Rev. 3/87 Material opposite unmarked squares is to be disregarded as surplusage.

2/21/91 Original Judgment Date

STATE OF NORTH CAROLINA

File No. 90CRS 10799 Count 1

Catawba County Newton Seat Of Court

In The General Court Of Justice
☐ District ☒ Superior Court Division

NOTE:
(This form is not to be used for multiple offenses unless they are consolidated for judgment.)

STATE VERSUS

CORRECTED JUDGMENT & COMMITMENT (EX MERO MOTU)

JUDGMENT AND COMMITMENT

G.S. 15A-1301

Defendant	Race	Sex	DOB	Pre-FSA Felony
Earl James Watson	White	Male	10/30/60	☐

Attorney For State	Def. Found Not Indigent	Def. Waived Attorney	Attorney For Defendant	
Jason Parker	☐	☐	Thomas Portwood	☒ Appointed ☐ Retained

DWI Offense	Level Of Punishment (G.S. 20-179)	Driver's License No. (DWI Only)	State (DWI Only)
☐			

The defendant ☒ pled guilty to: ☐ was found guilty by the Court of: ☐ was found guilty by a jury of: ☐ pled no contest to:

File No.(s) And Offense(s)	Date Of Offense	G.S. No.	Fel./M.	Class	Max. Term	Presumptive
90CRS 10799 Count I First Degree Kidnapping	7/12/90	14-39 A&B	F	D	40	12

The above offenses are consolidated for the purpose of judgment.
The Court having considered evidence, arguments of counsel and statement of the defendant Orders that the defendant be imprisoned

for a term of (40) Forty Years

in the custody of the ☒ N.C. Dept. of Correction ☐ Sheriff of _____ County

The defendant shall be given credit for _____ days spent in confinement prior to the date of this Judgment as a result of this charge.

☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

☐ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:
(NOTE: *List the Case Number, Date, County And Court In Which Prior Sentence Imposed.)*

(check all that apply)

☐ The defendant shall serve as a committed youthful offender pursuant to G.S. Chapter 148, Article 3B.

☐ The defendant should not obtain the benefit of release pursuant to G.S. 148-49.15.

☐ The defendant shall pay the costs.

☐ The defendant shall pay a fine of $ _____

☐ Immediate work release is recommended pursuant to G.S. 148-33.1. ☐ Work release is recommended. ☐ Work release is not recommended.

☐ With the consent of the defendant, work release is ordered under the conditions set forth in the attached order *(applies to misdemeanants only).*

☐ The Court does not recommend that the defendant be required to pay restitution or reparation, as a condition of parole if parole is granted, or from his earnings if work release is granted.

☐ The Court recommends that the defendant be required to pay, as a condition of parole if parole is granted, or from his earnings if work release is granted, the items and amounts set out below.

Fine	Costs	Restitution	Reimbursement For Counsel Fee(s) And Other Expenses	Total Amount Due
$	$	$	$	$

Names and address(es) of aggrieved party (parties) to receive restitution *(specify amount if more than one aggrieved party)*

The Court further recommends:

FOR USE WITH FAIR SENTENCING ACT FELONIES ONLY

The Court has considered the aggravating and mitigating factors in G.S. 15A-1340.4(a) and

☐ makes no written findings because the prison term imposed does not require such findings.

☐ makes no written findings because the prison term imposed is pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.

☒ makes written findings set forth on the attached Findings of Factors in Aggravation and Mitigation of Punishment (AOC-CR-303).

AWARD OF FEE TO COUNSEL FOR DEFENDANT

☐ A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT

It is ORDERED that the Clerk deliver three certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until he shall have complied with the conditions of release pending appeal.

2/21/91 Original Judgment Date

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*
12-16-91	Honorable Forrest A. Ferrell	

APPEAL ENTRIES

☐ The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order shall remain in effect. ☐ except that: .

☐ The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on Form AOC-CR-350.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*

ORDER OF COMMITMENT AFTER APPEAL

Date Remanded To District Court	*Date Appeal Dismissed*	*Date Withdrawal Of Appeal Filed*	*Date Appellate Opinion Certified*

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the Sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official three certified copies of this Judgment and this Order as authority for the commitment and detention of the defendant.

Date	*Signature Of Clerk*
	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

☒ Findings Of Factors In Aggravation And Mitigation Of Punishment (AOC-CR-303)
☐ Determination Of Sentencing Factors In DWI Cases (AOC-CR-311)
☐ Appeal Entries (AOC-CR-350)

Date	*Signature And Seal*
12-17-91	
Date Certified Copies Delivered To Sheriff 12-17-91	☒ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

AOC-CR-301, Side Two
Rev. 3/87

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA

File No. 90CRS 10799 Count 2

Catawba County Newton Seat Of Court

In The General Court Of Justice

NOTE: *(This form is not to be used for multiple offenses unless they are consolidated for judgment.)*

☐ District ☒ Superior Court Division

STATE VERSUS

CORRECTED JUDGMENT & COMMITMENT (EX MERO MOTU)

JUDGMENT AND COMMITMENT

G.S. 15A-1301

Defendant			
Earl James Watson			
Race: White	Sex: Male	DOB: 10/30/60	☐ Pre-FSA Felony

Attorney For State			Attorney For Defendant	
Jason Parker	☐ Def. Found Not Indigent	☐ Def. Waived Attorney	Thomas Portwood	☒ Appointed ☐ Retained

☐ DWI Offense	Level Of Punishment (G.S. 20-179)	Driver's License No. (DWI Only)	State (DWI Only)

The defendant ☒ pled guilty to: ☐ was found guilty by the Court of: ☐ was found guilty by a jury of: ☐ pled no contest to:

File No.(s) And Offense(s)	Date Of Offense	G.S. No.	Fel./M.	Class	Max. Term	Presumptive
90CRS 10799 Count II First Degree Sexual Offense	7/12/90	14-27.4A2	F	B	Life	

The above offenses are consolidated for the purpose of judgment.
The Court having considered evidence, arguments of counsel and statement of the defendant Orders that the defendant be imprisoned

for a term of: Natural Life

in the custody of the ☒ N.C. Dept. of Correction ☐ Sheriff of _____ County

The defendant shall be given credit for _____ days spent in confinement prior to the date of this Judgment as a result of this charge.

☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

☐ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:
(NOTE: *List the Case Number, Date, County And Court In Which Prior Sentence Imposed.*)

(check all that apply)

☐ The defendant shall serve as a committed youthful offender pursuant to G.S. Chapter 148, Article 3B.

☐ The defendant should not obtain the benefit of release pursuant to G.S. 148-49.15.

☐ The defendant shall pay the costs.

☐ The defendant shall pay a fine of $ _____

☐ Immediate work release is recommended pursuant to G.S. 148-33.1. ☐ Work release is recommended. ☐ Work release is not recommended.

☐ With the consent of the defendant, work release is ordered under the conditions set forth in the attached order *(applies to misdemeanants only)*.

☐ The Court does not recommend that the defendant be required to pay restitution or reparation, as a condition of parole if parole is granted, or from his earnings if work release is granted.

☐ The Court recommends that the defendant be required to pay, as a condition of parole if parole is granted, or from his earnings if work release is granted, the items and amounts set out below.

Fine	Costs	Restitution	Reimbursement For Counsel Fee(s) And Other Expenses	Total Amount Due
$	$	$	$	$

Names and address(es) of aggrieved party (parties) to receive restitution *(specify amount if more than one aggrieved party)*

The Court further recommends:

FOR USE WITH FAIR SENTENCING ACT FELONIES ONLY

The Court has considered the aggravating and mitigating factors in G.S. 15A-1340.4(a) and

☐ makes no written findings because the prison term imposed does not require such findings.

☐ makes no written findings because the prison term imposed is pursuant to a plea arrangement as to senfence under Article 58 of G.S. Chapter 15A.

☒ makes written findings set forth on the attached Findings of Factors in Aggravation and Mitigation of Punishment (AOC-CR-303).

AWARD OF FEE TO COUNSEL FOR DEFENDANT

☐ A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT

It is ORDERED that the Clerk deliver three certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until he shall have complied with the conditions of release pending appeal.

2/21/91 Original Judgment Date

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*
12-16-91	Honorable Forrest A. Ferrell	

APPEAL ENTRIES

☐ The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order shall remain in effect. ☐ except that:

☐ The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on Form AOC-CR-350.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*

ORDER OF COMMITMENT AFTER APPEAL

Date Remanded To District Court	*Date Appeal Dismissed*	*Date Withdrawal Of Appeal Filed*	*Date Appellate Opinion Certified*

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the Sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official three certified copies of this Judgment and this Order as authority for the commitment and detention of the defendant.

Date	*Signature Of Clerk*
	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

☒ Findings Of Factors In Aggravation And Mitigation Of Punishment (AOC-CR-303)
☐ Determination Of Sentencing Factors In DWI Cases (AOC-CR-311)
☐ Appeal Entries (AOC-CR-350)

Date	*Signature And Seal*
12-17-91	
Date Certified Copies Delivered To Sheriff	☒ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*
12-17-91	

AOC-CR-301, Side Two
Rev. 3/87

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA

CORRECTED FACTORES
(EX MERO MOTU)

File No.
90CRS 10799

Catawba County

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Defendant

Earl James Watson

FELONY JUDGMENT
FINDINGS OF FACTORS IN AGGRAVATION AND MITIGATION OF PUNISHMENT

G.S. 15A-1340-4(a)

NOTE: *Separate findings of aggravating factors and mitigating factors should be made for each offense. Only one factor should be found under each numbered item for which there are alternatives listed.*

AGGRAVATING FACTORS

☐ 1. a. The defendant induced others to participate in the commission of the offense.

☐ b. The defendant occupied a position of leadership or dominance of other participants in the commission of the offense.

☐ 2. a. The offense was committed for the purpose of avoiding or preventing a lawful arrest.

☐ b. The offense was committed for the purpose of effecting an escape from custody.

☐ 3. a. The defendant was hired to commit the offense.

☐ b. The defendant was paid to commit the offense.

☐ 4. a. The offense was committed to disrupt the lawful exercise of a governmental function or the enforcement of laws.

☐ b. The offense was committed to hinder the lawful exercise of a governmental function or the enforcement of laws.

☐ 5. The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duties. **(NOTE:** *Strike words that are not applicable.)*

☐ 6. The offense was especially heinous, atrocious or cruel.

☐ 7. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

☐ 8. The defendant held public office at the time of the offense and the offense related to the conduct of the office.

☐ 9. a. The defendant was armed with a deadly weapon at the time of the crime.

☐ b. The defendant used a deadly weapon at the time of the crime.

☐ 10. a. The victim was very young.

☐ b. The victim was very old.

☐ c. The victim was mentally infirm.

☐ d. The victim was physically infirm.

☐ 11. The defendant committed the offense while on pretrial release on another felony charge.

☐ 12. The defendant involved a person under the age of 16 in the commission of the crime.

☐ 13. a. The offense involved an attempted taking of property of great monetary value.

☐ b. The offense involved the actual taking of property of great monetary value.

☐ c. The offense involved damage causing great monetary loss.

☐ d. The offense involved an unusually large quantity of contraband.

☐ 14. The defendant took advantage of a position of trust or confidence to commit the offense.

☐ 15. The defendant has a prior conviction or convictions for criminal offenses punishable by more than 60 days confinement.

☒ 16. Additional written findings of factors in aggravation:

Defendant did not release the victim in a place of safety after she had been sexualy assaulted.

☐ The Court makes no findings of any aggravating factors.

Material opposite unmarked squares is to be disregarded as surplusage.

MITIGATING FACTORS

- ☐ 1. The defendant has no record of criminal convictions.
- ☐ 2. The defendant has a record of criminal convictions consisting solely of misdemeanors punishable by not more than 60 days imprisonment.
- ☐ 3. The defendant committed the offense under duress which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 4. The defendant committed the offense under coercion which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 5. The defendant committed the offense under threat which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 6. The defendant committed the offense under compulsion which was insufficient to constitute a defense but significantly reduced his culpability.
- ☐ 7. The defendant was a passive participant in the commission of the offense.
- ☐ 8. The defendant played a minor role in the commission of the offense.
- ☐ 9. The defendant was suffering from a mental condition that was insufficient to constitute a defense but significantly reduced his culpability for the offense.
- ☐ 10. The defendant was suffering from a physical condition that was insufficient to constitute a defense but significantly reduced his culpability for the offense.
- ☐ 11. The defendant's immaturity at the time of the commission of the offense significantly reduced his culpability for the offense
- ☐ 12. The defendant's limited mental capacity at the time of the commission of the offense significantly reduced his culpability for the offense.
- ☐ 13. The defendant has made substantial restitution to the victim.
- ☐ 14. The defendant has made full restitution to the victim.
- ☐ 15. The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct.
- ☐ 16. The victim was more than 16 years of age and consented to the defendant's conduct.
- ☐ 17. The defendant aided in the apprehension of another felon.
- ☐ 18. The defendant testified truthfully on behalf of the state in another prosecution of a felony.
- ☐ 19. The defendant acted under strong provocation.
- ☐ 20. The relationship between the defendant and the victim was an extenuating circumstance.
- ☐ 21. The defendant could not reasonably foresee that his conduct would cause or threaten serious bodily harm or fear.
- ☐ 22. The defendant exercised caution to avoid serious bodily harm or fear to other persons.
- ☐ 23. The defendant reasonably believed that his conduct was legal.
- ☐ 24. Prior to arrest, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
- ☐ 25. At an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
- ☐ 26. The defendant has been honorably discharged from the United States Armed Services.
- ☐ 27. The defendant has been a person of good character or has had a good reputation in the community in which he lives.
- ☐ 28. The defendant is a minor and has reliable supervision available.
- ☐ 29. Additional written findings of factors in mitigation:

☒ The Court makes no findings of any mitigating factors.

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

☒ factors in aggravation outweigh the factors in mitigation.

☐ factors in mitigation outweigh the factors in aggravation.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*
12-16-91	Honorable Forrest A. Ferrell	

AOC-CR-303, Side Two, Rev. 3/87 Material opposite unmarked squares is to be disregarded as surplusage.

2/21/91 Original Judgment Date

APPENDIX J

NORTH CAROLINA GENERAL STATUTE

§ 15A-1371. Parole eligibility, considerations, and refusal.

(a) Eligibility — Unless his sentence includes a minimum sentence, a prisoner serving a term other than one included in a sentence of special probation imposed under authority of this Subchapter is eligible for release on parole at any time. A prisoner whose sentence includes a minimum term of imprisonment imposed under authority of this Subchapter is eligible for release on parole only upon completion of the service of that minimum term or one fifth of the maximum penalty allowed by law for the offense for which the prisoner is sentenced, whichever is less, less any credit allowed under G.S. 15A-1355(c) and Article 19A of Chapter 15 of the General Statutes. Under this section, when the maximum allowed by law for the offense is life imprisonment, one fifth of the maximum is calculated as 20 years.

(a1) A prisoner serving a term of life imprisonment with no minimum term is eligible for parole after serving 20 years. This subsection applies to offenses committed on and after July 1, 1981.

* * *